

University of Alberta

Abstract Right, Reason, and the State in Hegel's Philosophy of Right

By

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Abstract

This thesis is a look at Hegel's use of abstract right in the *Philosophy of Right* as a means to show where the liberal contractarian view of rights and society fall short. It is a reply to those who would view Hegel in a contradicting light due to his use of individualist principles, and it is an attempt at understanding how it is that Hegel is arguing/reasoning.

Preface

In order to understand Hegel's presentation of abstract right properly, there are two key issues that need to be addressed directly by way of this preface. The first has to do with understanding the project of the *Philosophy of Right* on its own terms; a task I shall approach by contrasting it with the project of the *Phenomenology of Spirit*. The second deals with understanding what it is that Hegel is arguing against, an issue best dealt with in a contrast of the procedure of the *Philosophy of Right* with the procedure of contractarian theory.

The express purpose of Hegel's *Phenomenology of Spirit* is to provide a 'ladder' to the absolute standpoint. It does so by means of an immanent dialectical critique of all of the essential forms of experience, proceeding from the most immediate forms of experience, as these are 'logically' conceived, and hence abstracted from all real history and contingency, to their culmination in absolute knowledge. As such, the *Phenomenology* provides a 'logical history' of the origin and development of consciousness, self-consciousness and intersubjectivity. However, this 'logical' history is not the work of dogmatic metaphysics removed from all experience. Rather its completion presupposes that the course of the 'logical' history has already in principle been accomplished in actual history itself, in the midst of all real contingency, and represents an overcoming of it. This means that in principle the freedom/nature, subject/object, self/other dichotomies have been transcended in life, making possible the demonstration of this transcendence in theory. The *Phenomenology* is the explicit presentation of the 'logic' by which these

dichotomies are transcended, leading to the realization of absolute knowledge. This presentation presupposes that the conditions of absolute knowledge have in some sense already come to be realized in and through the totality of the perspectives of ordinary consciousness as these are effectively operative in Hegel's time, that is, in its ethical life, art, religion etc. in which above all the freedom and unconditioned worth of the individual are recognized as a moral imperative. It is in this condition, as Franz Rosenzweig says, that the idea of the Kingdom of God on earth has arisen as an effective moral demand.¹ And it is in this regard that Charles Taylor points out the *Phenomenology's* project "is to take the reader from where he is, buried in the prejudices of ordinary consciousness, to the threshold of true [knowledge]."² In their content the perspectives of ordinary consciousness are not abstractly universal and timeless but historical, that is, insofar as they embody the actuality of the rational these perspectives are an historical achievement and their universality is that of a concrete universal. Thus, in taking the reader to the threshold of true knowledge, the *Phenomenology* also shows the reader where in truth s/he already stands in terms of the 'actuality of the rational', that is, the actuality of his present historical world, by demonstrating in it the 'rationality of the actual'.

Now, to read the *Philosophy of Right* in an analogous manner would suggest that its argument progresses from what is the most immediate, elemental form of right and society, originating with single individuals taken in the abstract, and proceeding from this 'logical' beginning to more complicated social relations. But if Hegel rejects social contract theories, as he clearly does, – because, as he says, while they

¹ Rosenzweig, F. As quoted in Fackenheim, E. p.43.

² Taylor, C. *Hegel and Modern Society*, p.127.

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may represent a common will, they lack the universal (see §75 *Philosophy of Right*) – it would seem that he could not simply argue from abstract individualism and abstract right, which is his starting point, to the ethical life without somehow begging the question and illicitly invoking a communitarian view.

In this regard, it is my claim that the project of the *Philosophy of Right* does not repeat the phenomenological presentation with respect to ethical life and society; it presupposes it in several ways. It presupposes Hegel's phenomenological presentation of self-consciousness as inherently intersubjective with the thesis that self-consciousness originates and constitutes itself in and through social relations. Second it presupposes the *Phenomenology's* demonstration of the absolute standpoint. The *Philosophy of Right* considers right and society explicitly from that standpoint, to which the *Phenomenology* has already given the ladder. Thus, third, it presupposes the historical condition that makes the giving of that ladder and that standpoint truly possible.

There are three aspects of this view of the *Philosophy of Right* I want to note especially. First, as I have said, the *Philosophy of Right* gives an account of society from the absolute standpoint. This account presupposes the phenomenological account of the genesis of self-consciousness and ethical life, which in turn presupposes the actuality of the rational in the ethical life of the modern world. But then, second, the *Philosophy of Right* is not the account of a purely timeless possibility of ethical life but is the rational, conceptual account of ethical life as at once the historical accomplishment of the modern world and the universal and final truth, an accomplishment that, so to speak, fulfills history and 'annuls' time. Third,

the *Philosophy of Right* does present 'logically' the internal development of the Idea of right from its most immediate form in the sphere of abstract right to its fully realized form in ethical life. But 'logically' although the sphere of abstract right is the most immediate form of right based on the idea of freedom, it is not right in its fully developed truth as realized in the concrete ethical life of the modern world.

This last point leads to issues that have to do with how Hegel understands the abstract and the concrete in relation to universality. The *Philosophy of Right* deals with the Idea of right (universal) as it is concretely realized in the world. In doing so, it advances a different understanding of abstractness, concreteness and universality than is common among philosophers. For Hegel, it is particulars taken simply as such that are abstract, whereas universals are general and concrete. This different interpretation is based in part upon a difference that Hegel believes exists between merely 'correct' claims about ethical life and right made in abstraction from the whole of ethical actuality, and the 'truth' of ethical life as the concrete universal; it comes down to the idea that a "will without freedom is an empty word, just as freedom is actual only as will or as subject."³ The truth of ethical life, as the concrete universal, must enable the actualization of one's own determinate individuality (for a "will without freedom is an empty word"). Therein the modern individual, according to Hegel (and as Allen Wood writes), is only truly free where social institutions provide for it, that is, the idea of right as it is concretely realized in the world (that is, "freedom is actual only as will or as subject"). It is that which he refers to as subjective freedom: 'Being with oneself in an other in which the other is the individual's own actions and choices;' or put more simply yet, the conditioned

³ Hegel, GWF. *Elements of the Philosophy of Right*, §4:35.

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understanding of oneself in one's relation with the world. The State (as its manifestation) must respect and provide for the individuals rights in the form of its institutions.⁴

In regard to the concrete universal in the *Philosophy of Right* the key point that Hegel is trying to make is that one's will is not complete, nor is it universal, until it is concretely realized in the world. As Dudley Knowles points out, the concrete universal is the story of a rationality that deals with the structures of the mind in terms of universality and particularity "separately specified yet perspicuously synthesized (*aufgehoben*) in a comprehensive, individual totality."⁵ It represents a comprehensive totality, one in which the rational is the actual and the actual is rational,⁶ concrete in the sense that it is realized in the objective world, it is not merely the 'ought' of an authoritative system of rights.

According to Hegel the immanent generic character, or the immanent Idea, of the concrete universal lies in self-consciousness, it being through self-consciousness that it is able to have being for itself and be concrete within itself. This rather cryptic statement can be clarified by turning to something that David Sherman writes in the *Introduction* to his (and Leo Rauch's) text and commentary on the self-consciousness section of the *Phenomenology*.

Consciousness ascends to the State which Hegel calls 'Absolute Knowing', in which consciousness recognizes that its knowledge of objects is ultimately self-knowledge, and that self knowledge is always conditioned by some existing sort of socio-historical categories.⁷

Consciousness, he goes on to write, is impelled to move beyond the two one-sided

⁴ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.xiv.

⁵ Knowles, D. p.238.

⁶ Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.20.

⁷ Rauch, L. & Sherman, D. p.02.

approaches of traditional philosophy if it is to come to terms with its object. In doing so it is able to do away with the idea of objects existing independently of our experience of them.⁸ Knowledge of the world is only attained through the concept. Thus the concept of the free will (as the universal element) is able to extend beyond its object, permeating its determination, that is, the conditioning socio-historical categories; it remains identical with itself as its character is of its own (conditioned) self-consciousness. The universal, which has being in and for itself, is in general what is called the rational, and it can only be understood in the speculative way.⁹ Thus the rational is the socio-historically conditioned understanding of oneself in one's relation with the world.

Hegel's point is that the truth for the freedom/nature, subject/object, self/other, dichotomy is the concrete universal as a unity of particularity and universality realized in the world. In the *Encyclopedia of the Philosophical Sciences*, he writes:

The movement (of world history) is the path of liberation for the ethical substance from its particularities, in which it is real in the individual peoples - the act whereby the spirit itself becomes general, the world spirit. Since this is the development of the spirit's self-consciousness in time, its several moments and stages are the rational spirits, each of which, however, as single and rational can complete only one level and only one task in the whole deed.¹⁰

Yet, as the British idealist J. McTaggart points out, the concrete universal is not a particular surface that reflects or manifests a universal substratum, but is a (universal) law that is changed into the very world itself, its actuality lying in its manifestation.

And actuality (that is the concrete universal)...is a manifestation, it does not

⁸ *Ibid.* p.05/06.

⁹ Hegel, GWF. *Elements of the Philosophy of Right*, §24:55.

¹⁰ Hegel, GWF. *Encyclopedia of the Philosophical Sciences in Outline and Critical Writings*, §449:255.

enter the sphere of alteration by its externality, nor is it the appearance of itself in another, but it manifests itself; that is, in its externality it is itself, and is only itself in its externality, that is, in a determining movement which separates it from itself.¹¹

In the *Encyclopedia* passage (§449 from above) Hegel refers to the "liberation of the ethical substance from its particularities, in which it is real in the individual peoples - the act whereby the spirit itself becomes general." This process, described by Hegel so tersely, is about development; it is made up of "moments and stages" of the rational spirit, each of which completes only a single task or level of the entire 'deed'. J. Glenn Gray provides a helpful insight into this issue. Writing in *Rethinking American Education*: "General derives from the Latin word *genus*, meaning class or kind as opposed to local or individual."¹² The general, he reasons, has a very different meaning from the particular; and in Hegel this difference is not only recognized, but is put to use as a central tenet to his philosophy. The general, Gray writes, is more likely to be concrete than the particular for it reveals the particular in its larger context.¹³

Hegel taught only that which is general is concrete, for the particular is isolated and thus abstract. To look at any phenomenon, whether it be a school-boy or an atom, apart from its belongingness in a vital whole, is to be abstract (particular). Part of the very being of schoolboy and atom consists in their position and participation in a larger context. Relatedness is essential to our reality.¹⁴

Unwittingly (Gray goes on to reason), we fall into particularity and thus abstraction just when we believe ourselves to be concrete and specific. It is in liberation from the isolated and abstract (particular), from participation within a larger context, and from

¹¹ McTaggart, J. §161:162.

¹² Gray, J.G. p.02.

¹³ *Ibid.* p.02.

¹⁴ *Ibid.* p.02.

the essentiality of relatedness to our reality, that we are able to understand what Hegel means when he writes of the movement of world history as the path of liberation from particularity. And what McTaggart is referring to when he writes of the determining movement that separates actuality from itself. It is the movement of the spirit from particularity to the concreteness offered by the general that liberates the spirit. In Hegel, the particular always represents the opposite of the concrete, whereas the general need not ever.

It is thus that Hegel's notion of the concrete universal has to do with a universal truth that is actual in and as the whole of the social world. But it is not to be understood as being actual in and of itself, because we are able to form in the abstract a plausible view about rights and freedoms that claims to be universal, as if these views alone (what Hegel refers to as "empty imaginings") established the actuality of rights and freedoms. Rather, right and freedoms are actual in being actualized by us as we relate ourselves to something real, something in terms of which the power of reason truly does actualize itself in the world.¹⁵ It is the (rational) actions of a people that provide the determinations to a given stage of history and thereby make reason actual. In the sphere of ethical life, concrete universality consists in the unity of subjective and objective freedom, that is, the unity in individual ethical life of the substantive universal and particular. It is a universal that "does not attain validity of fulfillment without the interest, knowledge, and volition of the particular."¹⁶ It is an idea of the actual that is "still only in-itself or immediately the unity of essence and

¹⁵ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.xxv.

¹⁶ Hegel, GWF. *Elements of the Philosophy of Right*, §260:282.

existence."¹⁷

The second introductory issue to be considered has to do with those views in general which Hegel is arguing against. I will deal with this issue by means of an excursus into Smith and Hobbes, not for their own sake, but to see how Hegel might regard them. Thus, in a preliminary and general way, I will contrast Hegel's *Philosophy of Right* with liberal contractarian theory as exemplified by *The Wealth of Nations* and *Leviathan*. In this way I hope in broad terms both to clarify Hegel's understanding of such theory, and specify the terms of his critique. In this respect, as I have already intimated, Hegel's principal thesis is that the particularized type of right of which liberal theory is a proponent succeeds in being nothing more than a mere abstraction. A social order founded upon such emptiness is unable even to protect the rights of the individual, much less actualize concrete freedom. Such theory is at best able to offer a mechanistic conception of the State, which Hegel contends is not a true State at all.

My procedure here requires some qualification, however. By turning to the examples of Smith and Hobbes, I am by no means attempting to imply that they are the only two (or even the primary) theorists that Hegel is critiquing when he writes his section on *Abstract Right*.¹⁸ For *Abstract Right* is not so much concerned with a theory *per se* as with the prevailing rationality of Hegel's time, which has its thematic explicit expression in liberal contract theory. It is this rationality, not any particular theory, that Hegel is subjecting to immanent critique. I turn to Hobbes and Smith as a convenient and familiar expression of that rationality. Moreover, my intention for the

¹⁷ Hegel, GWF. *The Encyclopaedia Logic*, §163:240.

¹⁸ Yet, no less a Hegel scholar than A. Kojève writes: "Hegel undoubtedly takes Hobbes as his point of departure." See Strauss, L. p.231.

moment is not to make the case that Hegel is right in his immanent critique but to simply mark the terms of the difference between his view and these examples of liberal theory.

Of the concept of the subject and its relationship to others Adam Smith writes that one must not appeal to a sense of humanity, but rather to the other's sense of self-love; and not to talk to them of necessity but of advantage. He reasons:

[That] man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favor, and show them that it is for their own advantage to do for him what he requires of them... It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest.¹⁹

It is this matter of self-interest that, Smith reasons, governs the order and function of society. His view, much like we will see with Hobbes and one not contrary to Hegel, is based upon the belief that there is much less difference in the talents and capabilities of individuals than we may be aware of. The difference in people hinges more on a division of labor than it does a difference in what Smith refers to as natural talents. "By nature," Smith writes, "a philosopher is not in genius and disposition half so different from a street porter, as a mastiff is from a greyhound."²⁰ The 'actuality' for Smith's 'rationality' lies in the multiplication of the productions of all the different arts, based on the division of labor, which in turn provides the foundation for a well-governed society. And it is thus that he offers a model of society open to Hegel's critique. It is in Smith's words a model of "universal opulence which extends itself to the lowest ranks of the people."²¹

¹⁹ Smith, A. p.14.

²⁰ *Ibid.* p.16.

²¹ *Ibid.* p.11.

As Max Lerner points out in the *Introduction to The Wealth of Nations*, Smith stood at the dawn of a new era in science and thus, the occasion for a new era in Europe.

What [Smith] wrote was the expression of forces which were working, at the very time he wrote it, to fashion that strange and terrible new species - *homo economicus*, or the economic man of the modern world.²²

Smith's ideas summed up an age; and Lerner sums Smith up nicely:

First, Smith assumes that the prime psychological drive in man as an economic being is the drive of self-interest. Secondly, he assumes the existence of a natural order in the universe which makes all the individual strivings for self-interest add up to the social good. Finally, from these postulates, he concludes that the best program is to leave the economic process severely alone - what has come to be known as *laissez-faire*, economic liberalism, or non-interventionism.²³

And although there are scant references to Smith in Hegel's published works, there is evidence of Smith's influence. In the *Editorial Notes to the Philosophy of Right* Allen Wood writes:

Hegel was... a student of Adam Smith's *Wealth of Nations*; in his lectures of 1819-1820 he endorses Smith's labour theory of value: 'Manual labour in general, a day's wages, these are the final elements of the price of things in relation to each other.'²⁴

This comment by Wood is made in relation to §63 of the section *Abstract Right* in which Hegel writes that (in an abstract conception of right) a thing's value arises out of the simple determinacy of its particularity, and is thus at the same time abstracted from the universality of its specific quality. As the owner, Hegel reasons, the value of a thing becomes determined and an object of consciousness. As an owner I become an owner of the things value; that is to say, Hegel accepts a version

²² Lerner, M. in Smith, A. p.v.

²³ Lerner, M. in Smith, A. p.viii.

²⁴ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.411.

of the capitalist doctrine of possessive individualism, yet he ventures to give a more fundamental account of how that possession is truly constituted. Contrary to Smith, it is in the relationship that arises between the need of the particular and the equally arbitrary will of others that Hegel reasons universality asserts itself. It is the recognition of a manifestation of rationality which is present and active within the thing.²⁵ "The proliferation of arbitrariness generates universal determinations from within itself, and this apparently scattered and thoughtless activity is subject to a necessity which arises of its own accord."²⁶ The necessity that exists is, for Hegel, made up of the laws underlying the mass of contingencies (and the object of political economy). It is an interaction that he likens to the planetary system; for, while it may appear to the eye as nothing more than irregular movement, its laws can nevertheless be recognized.

In a lot of ways very similar to what we have seen with Smith, Hobbes' vision and understanding of the State, of right, and of freedom, is derived from a belief in people that places the emphasis on one's sense of self-love and preservation due to, what all three of our theorists share, a belief in the equality of individual capabilities. He (long before Smith) theorized about advantage in the sense of a primitive level of appropriation and freedom. But unlike the ideas we had seen with Smith, Hobbes also introduced a sense of necessity to one's natural inclination towards self-interest. His account is that of power; and not for its own sake but for future satisfaction. And it is in this that we see another bit of common ground between Hegel and Hobbes – the view that original encounters between individuals are power struggles – and

²⁵ Hegel, GWF. *Elements of the Philosophy of Right*, §189:227.

²⁶ *Ibid.* §189:228.

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therein both thinkers views suggest a sophisticated form of self-consciousness that is all ready at play in their theories. The difference being that for Hegel power is manifested in life (as Marx has reasoned, humans produce the means of life), suggesting an even more radical conception than Hobbes. Hegel is able to show how the rational self-actualization of human being as spirit transcends a primitive level of appropriation and freedom.

Hobbes' *Leviathan* is a social contract; in exchange for a portion of one's liberty the commonwealth protects one from a life that is "solitary, poor, nasty, brutish, and short."²⁷ For without the commonwealth life is life in nature which is a war of all against all. And it is precisely this thesis which Hegel transcends by means of his immanent critique; that is, a thesis about the subject and human nature taken in the abstract and used to construct a theory of the commonwealth. For Hegel regards this opposition of nature and society as a falsifying abstraction. Human nature is realized in and through social action as humans realize themselves. As he writes in the *Phenomenology*:

A self-consciousness exists for a self-consciousness... What still lies ahead for consciousness is the experience of what Spirit is – this absolute substance which is the unity of the different independent self-consciousnesses which, in their opposition, enjoy perfect freedom and independence: 'I' that is 'We' and 'We' that is 'I'.²⁸

Ultimately, the differences come back to the thinkers' differing conceptions of freedom and liberty. Contrary to Hegel's conception of freedom and liberty (as a freedom through determination – the idea that a will without freedom is an empty word, just as freedom is actual only as will or as subject), Hobbes defined freedom as

²⁷ Hobbes, T. p.186.

²⁸ Hegel, GWF. *Phenomenology of Spirit*, §177:110.

an absence of opposition. Hobbes reasons:

Liberty, or freedom, [properly signified is] the absence of opposition (by opposition I mean external impediments of motion); and may be applied no less to irrational and inanimate creatures, than to rational. For whatsoever is so tied, or environed, as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath not liberty to go further.²⁹

For Hegel, freedom in this sense is merely that of a void; his conception of freedom, as I have already shown, is only known by relating ourselves to something that allows us to actualize it in the world.

It is worth noting that Hobbes lived at a time when scientific and mechanistic conceptions were developing to explain and understand the world. Phenomena were understood via their underlying mechanisms. This is the case with Hobbes' mechanism of the commonwealth, which is a guarantor of liberty and a common power that is set over both individuals. It has right and force that is sufficient enough to compel performance; a "power set up to constrain those that would otherwise violate their faith."³⁰ Its rationality is the laying down of one's rights to all things - a limitation that individuals place upon themselves (as opposed to the ethical determination that we get with Hegel).

[It is] to be contented with so much liberty against other men, as he would allow other men against himself. For as long as every man [holds (onto) his right] of doing anything he likes, so long are all men in the condition of war... To lay down a man's right to anything is to divest himself of the liberty of hindering another of the benefit of his own right to [do] the same.³¹

To begin his section *Of Commonwealth* Hobbes writes:

The final cause, end, or design of man (who naturally love liberty, and dominion over others) in the introduction of that restraint upon themselves (in

²⁹ Hobbes, T. p.261.

³⁰ *Ibid.* p.196.

³¹ *Ibid.* p.190.

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which we see them live in Commonwealths) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war which is necessarily consequent (as has been shown) to the natural passions of men; and [to tie] them by fear of punishment to the performance of their covenants, and observation of those laws of nature set down...³²

Different from what I will come to show as rationality for Hegel (the ethical State as a concrete universal), the rationality of the *Leviathan* is only actualized in what Hegel would regard as being the arbitrary will of the particular. The *Leviathan* represents what Hobbes himself refers to as the construction of an artificial man; a man restrained by the fastenings of artificial chains.

But as men, for the attaining of peace, and conservation of themselves thereby, have made an artificial man, which we call a Commonwealth; so also have they made artificial chains called civil laws, which they themselves, by mutual covenants, have fastened at one end to the lips of that man, or assembly, to whom they have given the sovereign power; and at the other end to their own ears.³³

Whereas, for Hegel:

If the nation, as ethical substance – and this is what it is in itself – does not have this form (the formal realization of the Idea in general within it), it lacks the objectivity of possessing a universal and universally valid existence [*Dasein*] for itself and others.³⁴

³² *Ibid.* p.223.

³³ *Ibid.* p.263-264.

³⁴ Hegel, GWF. *Elements of the Philosophy of Right*, §349:375.

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To Robert, for his patience and insight.

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Introduction

A contradiction seemingly arises in Hegel's *Philosophy of Right*. On the one hand, Hegel is reputed to be a critic of abstract individualism, and yet on the other hand, he begins the *Philosophy of Right* with a discussion of abstract right that seems to advance just such an individualist thesis. When he discusses abstract right Hegel appears to put forward the idea that abstract right is the basis of society and hence that society is constituted through an individualistic contract. So individualistic does Hegel's discussion seem to be that it leads one to ask: How are we to understand the fact that Hegel, although almost universally regarded to be a severe critic of individualism, begins his *Philosophy of Right* with a theory of private right, and seems to argue for a contract theory of society along individualist lines? Should we conclude from this beginning that the *Philosophy of Right* does indeed defend the primacy of abstract right, "in an individualist manner similar to Locke," as at least one commentator has suggested?¹ If so, does this show Hegel to be a proponent of a liberal individualist and contractarian theory, contrary to the usual understanding of him? And if so, does this mean that the usual understanding is unusually misguided?

What I offer in this thesis is a reading of the *Philosophy of Right* that regards Hegel's presentation of abstract right as the first step in seeking to comprehend the prevailing 'actuality of the rational', i.e., the principle of freedom and the unconditioned worth of the individual as a recognized moral/political demand. Yet this proves likewise to be an immanent critique of the prevailing 'rationality of the

¹ Siep, L. as presented in Williams, R. p.137.

actual' i.e., liberal contract theory. What is essential to this actuality of the rational is the conviction, valid in and for the modern world as its basic moral and political principle/precept, that the individual is free and has unconditioned worth. On this point, Hegel and liberal theory agree. Where Hegel differs has to do with how this conviction is to be truly understood and hence what ethical life allows for the full realization of the freedom of the will. It is on this score that Hegel thinks that liberalism misunderstands itself and that the liberal contractarian view does not coherently present the rationality of this actuality.

In Hegel's view liberal theory is concerned with the arbitrary and the external form of the free will, representing it only in terms of the mere potential for the actualization of its rational freedom in relation to a given external world. In doing so it takes both the reality of the free will in itself and the reality of the external world itself as mere givens and on these terms adduces its theory of rights. Thus on the one hand, liberal theory presents the free will as "infinite will," an empty abstract awareness of its power to act. On the other hand, it regards the content of the free will as consisting of the determinate ends that the will posits in the external world confronting it. As Hegel writes: "What is immediately different from the free spirit is, for the latter and in itself, the external in general – a thing, something unfree, impersonal and without rights."² The question of rights comes down then to the question of determining the rational limits of the exercise of everyone's given arbitrary freedom over things. It is not Hegel's point to reject this idea of abstract freedom and right wholesale, but to show how it belongs to and yet is truly comprehended and accommodated in a complete understanding of ethical life. For it

is Hegel's claim that the truth of the free will, of rights and of the external world lie not in their abstract juxtaposition but in their concrete universal realization.

The *Philosophy of Right's* subject matter is the very 'Idea' of right as a concrete universal in Hegel's technical sense, that is, as a universal in which reason and reality have been concretely united and realized as such in the actual world. As I explained in the *Preface*, universals for Hegel are not truly actual in the abstract as mere general ideas, but only as they are concretely realized in the world in both senses of the term 'realize' i.e., both made known and made real. In Hegel's vocabulary then, universals are general, holding as common over all particulars, but are also concrete, holding as common in and through the actual particulars over which they extend. In contrast, particulars regarded in themselves and taken simply as such are abstract, since they are removed from the concrete context in which they have their reality, meaning and truth. The *Philosophy of Right* treats the State as a concrete universal as it has been concretely realized in the world and thus is now actual. It deals both with the concept of right and with the actualization of that concept, since according to Hegel's thesis these two are inseparable. Its truth lies in the coherent presentation and comprehension of the rational understanding of right that is now actual in the world. Hegel's claim is that liberal theory, in virtue of its abstractness, fails to achieve this understanding in its complete truth.

To answer any concerns raised about the role of Hegel's concept of abstract right, we require an understanding of the way in which Hegel himself poses the question of abstract right, and how this fits into the overall argument structure of the

² Hegel, GWF. *Elements of the Philosophy of Right*, §42:73.

Philosophy of Right. With this in mind, the main body of my thesis (in the chapter to follow) will begin with an explication and defense of two aspects of Hegel's overall argument. The first aspect concerns the claim that the *Philosophy of Right* does not present an abstract timeless truth about social reality and right but is rather its "own time comprehended in thought."³ The possibility of this comprehension that sets forth the rationality of the actual presupposes the historical condition of the actuality of the rational. Yet this condition is not just one more historical condition among others but the actuality of the rational its final form. For there is in Hegel's view nothing *essentially* new that is now able to occur in history, since in principle the progress to the consciousness of freedom is over, even though empirical history continues on. Likewise, then, the rational comprehension of this actuality is not just one more philosophical view but the comprehension of the actuality of the rational, its final comprehension as such. The focus for this discussion will of course be the (in)famous claims Hegel makes in the *Preface* about the rational and the actual, the owl of Minerva, and the timeliness of philosophy.

The second aspect of Hegel's argument to be considered has to do with the abstractness of the beginning of the *Philosophy of Right* and in a positive sense with the 'circular' character of the argument. This beginning represents in abstract terms the ethical life of the modern world as governed by the principle of freedom, a principle recognized abstractly in modern life as a moral demand, and theorized abstractly by liberal theorists. And it will prove to be an abstract element of the concrete universal that is the truth of ethical life that the text comprehends. Yet the *Philosophy of Right* does not simply abstract *from* the truth of modern ethical life;

³ *Ibid.* Preface p.21.

rather it begins with the very abstraction that is currently actual in that life, i.e., the abstraction that prevails both in ordinary 'representation' or understanding, and in liberal theory. It thus presupposes current ethical life. Accordingly, Hegel makes no abstract argument for the principle of freedom. It is rather both the presupposition and the conclusion of the whole argument of the *Philosophy of Right*. It is in this sense that the argument can be said to be circular. But it subjects its beginning to an immanent critique in such a way that in the end ethical life is both comprehended and transfigured. The argument avoids being a 'vicious' circle by virtue of this immanent critique, showing that ethical life as it is currently lived and theorized falls short of the truth of its *own* actual principle. This can be done only if Hegel can make good his claim that the 'truth is the whole' by situating the abstract elements of the *Philosophy of Right* with which he begins within a complete concrete ethical context, negating their abstractness while preserving and transforming their truth in a higher understanding (which is the sense of Hegel's infamous '*Aufhebung*').

I will base my discussion of abstract right on the following considerations.

Hegel's view of right is founded on an ethical theory that identifies the human good with the self-actualization of human being as spirit. As Hegel writes:

The basis [*Boden*] of right is the realm of spirit in general and its precise location and point of departure is the will; the will is free, so that freedom constitutes its substance and destiny [*Bestimmung*] and the system of right is the realm of actualized freedom, the world of spirit produced from within itself as a second nature.⁴

But Hegel considers the abstract as something particular, separate from the general and concrete realm of spirit in which it has its truth, as the realization of a positive

⁴ *Ibid.* § 04:35.

idea. And while in an abstract form of right the subject "may well believe that it wills some positive condition...It does not in fact will the positive actuality of this condition."⁵ Of course the meaning of this claim depends upon the meaning of "positive actuality." Suffice it here to point out that, contrary to the realization of the positive idea of right, the merely negative freedom suggested here could never entail anything other than a negative idea, the idea of negative freedom being an abstraction from the actuality of freedom, realized in the determination of particular ends. This determination is a freedom of arbitrariness, an unwillingness to grant itself the determinacy of an ethical life.

Right is defined by Hegel as the freedom of an idea that exists within a subject that embodies a will. Yet the actuality of right depends upon the actuality of freedom, and the actuality of freedom does not depend on "empty imaginings" as liberal theory might claim, but on our concrete rational self-determination in and in relation to a real, existent world and determinate ends realized. If we take freedom in the abstract we are confined to a conception of right that is only ever able to entail a reflection of the ego into itself, resulting is a 'dissipation' of content where one's freedom is simply freedom to chose this or that arbitrary end at random. It represents, Hegel claims, a "freedom of the void, which is raised to the status of an actual shape and passion."⁶ Hegel, as should be quite obvious even at this stage of my thesis, believes this type of personal right to be nothing more than an empty abstraction. For a social order founded upon such emptiness, as Allen Wood points out, "[would] be unable to even protect individual rights, much less to actualize the whole of concrete

⁵ *Ibid.* § 05:38.

⁶ Hegel, GWF. *Philosophy of Right*, § 05:38.

freedom.”⁷ The greatest enemy to personal and subjective freedom, Wood goes on to write, is a mechanistic conception of the State that views the State as a means for the enforcement of arbitrary and contingent (abstract) rights: “It sets the State up as an abstraction in opposition to individuals.”⁸ The principal aim of the *Philosophy of Right* is to demonstrate how both personal right and subjective freedom can receive real content in and through the concrete universality of the ethical State as it is realized in the world.

Having thus set forth the argument structure in section one, what follows will be a discussion on Hegel’s theory of abstract right *on its own terms*. I will summarize what it is that Hegel presents as abstract right. The point will be to see how Hegel’s account of abstract right serves as a critique of the prevailing rationality of the actual in the abstract contractarian views of right and society. It will include not only a sketch of Hegel’s view of abstract right on its own terms, but also how Hegel uses his account of abstract right as a means of critique, and how it fits in with the ‘actuality of the rational’.

A central part of my discussion will be to show how an interpretation of Hegel as an individualist is a misreading and misunderstanding of the text, and in doing so, to establish abstract right as it most truthfully is – that is, as something dependent upon concrete ethical life from which both ordinary and liberal theory abstract it – rather than being the elemental foundation of society itself. In other words, I want to present Hegel as thinker who rejects liberal individualist contract theories of right as abstractions that falsify the true nature of human society that has finally been realized

⁷ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.xvi.

⁸ *Ibid.* p.xvi.

in principle in our time and for which liberal individualist contract theories presume to give a true account and justification. In doing so, I hope to make clear that Hegel's use of the principle of individualism is meant to show by means of an immanent critique how the prevailing rationality of the actual, which is liberal theory, falls short of presenting coherently the prevailing actuality of the rational (i.e., the recognition of the principle of freedom as a moral demand) on its own terms. This will both show the shortcomings of the liberal individualist contract theory as a true account of ethical life, as well as how Hegel's own views (correctly interpreted) accommodate and do justice to the idea of abstract individualism, seeing it as something central to the current actuality of the rational but not as the whole story. My task is to demonstrate the 'correct' thesis in terms of abstract right in order to show how it is subsumed into the larger concrete truth.

Chapter I: Of Timelessness and Circularity

*Hic rhodus, hic saltus.*¹ And with that, Hegel throws out a challenge to those who think that philosophy is able to transcend its contemporary world. It is to the fable *The Braggart* that he refers, the Aesopian tale that tells of an athlete who had claimed while traveling to Rhodes to have jumped over the Colossus and that there were witnesses there who could back up his story. When, later, this 'braggart' saw fit to boast of this feat, a jump so high no other man alive could equal it, an onlooker simply said to him, 'Well my friend, if what you say is true, you don't need any witnesses. Here is Rhodes, [jump here].'² Hegel's allusion to this fable is meant to illustrate his point that philosophy does not transcend its own time by means of a dogmatic metaphysical construction but is its own time comprehended in thought. This 'comprehension' is a matter of philosophy conceiving and describing the State as inherently rational, since the actual State is the State as it has been 'rationally' constituted, and through this description and comprehension to judge it on its own 'rational' terms. For philosophy to presume to transcend its own time, leaving the actual world behind, would be as empty a claim as the 'braggart's' boast.

Hegel's use of this particular analogy—"it is just as foolish to imagine that any philosophy can transcend its contemporary world as that an individual can overleap his own time or leap over Rhodes"³—has a rich meaning. The Colossus of Rhodes was a giant statue of Apollo (Helios), which the people of Rhodes had erected

¹ Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.21.

² Aesop, in Hegel, GWF. *Elements of the Philosophy of Right*, p.390.

to celebrate victory over their enemies and to acknowledge themselves as having "kindle[d] the lovely torch of freedom" (from the inscription on the base). Apollo is the Delphic God of self-knowledge. To tie this in with philosophy, in the *Apology* we are told by Plato that in response to Chaerephon's question regarding who was the wisest man, the Oracle at Apollo's temple at Delphi replied that it was Socrates who was the wisest on the basis of his self-knowledge; so Plato's account of Socrates would lead us to conclude, of the knowledge that Socrates possessed of himself, that in effect he knew nothing. But the Oracle's message provided a turning point for Socrates and initiated his mission as gadfly of Athens, getting people to think not in terms of passing opinions but in terms of eternal moral and ethical values. Hegel uses the analogy, with its invocation of the Delphic project, as a challenge to the philosopher to show how self-knowledge in terms of the eternal and unchanging could be realized, the suggestion being that it is impossible. Hegel's point? The philosopher cannot overleap his own time since the terms in which he thinks philosophically and holds to be rational are those of the prevailing actuality of the rational that define the present world, i.e., his actual time. He cannot abandon these terms and still 'think'; he can only test their adequacy internally. In thinking in these terms the Hegelian philosopher seeks rationally to comprehend what actually is with regard to the State, Hegel's assumption being that the State is not something utterly contingent and adventitious but a rational construction, as opposed to constructing an abstract ideal dogmatically. In this regard, Hegel rejects generally the pre-Kantian view that juxtaposes appearance and reality as if there were two-worlds in favor of the thesis that the world really is essentially as it appears. The appearance/reality

³ *Ibid.* Preface p.21-22.

distinction is thus reframed by Hegel as a distinction within appearance as the effective reality for us between what is actual and what is simply existent. If philosophical theory goes beyond the existent and actual world in experience by building in thought an ideal world as it 'ought to be,' whereas this ideal is a conception that does exist, it is one that only exists within the opinions of a particular individual, "a pliant medium in which the imagination can construct anything it pleases."⁴ The truth of philosophical understanding lies not in some abstract timeless construction but in terms of what is demonstrated here and now in relation to what here and now we take our reality to be. This is what makes Hegel's critique immanent. Or put differently, following the Kantian turn, the reality in Hegel's view is the world as it appears to us, as opposed to some 'other-world' domain that lies behind the appearance and is accessible only in thought. Genuine philosophical knowledge is knowledge that is linked to knowing ourselves *in medias res*.

In the *Philosophy of Right*, Hegel does not simply ask in the abstract about a timeless truth of right in itself but rather asks: 'What in our time have we rationally determined Right [*Recht*] to be?' For that is the actuality of right, as opposed to some theoretical musings about it. By doing so he is claiming that what is most important and fundamental to the human subject is actualized *in* this world as this world is the only reality there is as the reality for us that we actually 'live'. But in terms of its fundamental principle, the reality we live in the modern world is decisive for it constitutes in principle a fulfillment wherein that actuality is a union of reality and reason, of the human and the divine, of history and the eternal. To make sense of this notion of actuality, a little background on Hegel's philosophy of history is required,

⁴ *Ibid.* Preface p.22.

beginning with a discussion of actuality.

§I.1 Philosophy, History, Actuality: A Little Background

In the *Encyclopaedia Logic* Hegel writes:

But when I speak of actuality, one should, of course, think about the sense in which I use this expression, given the fact that I dealt with actuality too in a quite elaborate *Logic*, and I distinguished it quite clearly and directly, not just from what is contingent, even though it has existence too, but also, more precisely, from being-there, from existence, and from other determinations. The notion that ideas and ideals are nothing but chimeras, and that philosophy is a system of pure phantasms, sets itself at once against the actuality of what is rational; but, conversely, the notion that ideas and ideals are something far too excellent to have actuality, or equally something too impotent to achieve actuality, is opposed to it as well. However, the severing of actuality from the Idea is particularly dear to the understanding, which regards its dreams (i.e., its abstractions) as something genuine, and is puffed up about the "ought" that it likes to prescribe, especially in the political field – as if the world had had to wait for it, in order to learn how it ought to be, but is not. If the world were the way it ought to be, what then would become of the pedantic wisdom of the understandings "ought to be"? When the understanding turns against trivial, external, and perishable ob-jects, institutions, situations, etc., with its "ought" – ob-jects that may have a great relative importance for a certain time, and for particular circles – it may very well be right; and in such cases it may find much that does not correspond to correct universal determinations. Who is not smart enough to be able to see around him quite a lot that is not, in fact, how it ought to be? But this smartness is wrong when it has the illusion that, in its dealings with ob-jects of this kind and with their "ought," it is operating within the [true] concerns of philosophical science. This science deals only with the Idea – which is not so impotent that it merely ought to be, and is not actual – and further with an actuality of which those ob-jects, institutions, and situations are only the superficial outer rind.⁵

The quote, although long, brings to light important aspects of Hegel's reasoning and will serve as a reference in providing a summary sketch of Hegel's philosophy of history. It will serve in particular as a guide in interpreting Hegel's "What is rational is actual; and what is actual is rational,"⁶ with which my sketch of his philosophy of

⁵ Hegel, GWF. *The Encyclopaedia Logic*, §6:29-30.

⁶ Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.20.

history will begin.

Hegel's claim is that the current actuality is rational as the result of reason in its dynamic progressive character having actualized itself through what collectively we have done concretely in the world over time. Yet the actuality of the rational is not the same as the existing political order in all of its contingent aspects. The thesis being that the 'Idea' is not so impotent that it only ought to be in thought without actually being. With this thesis, Hegel levels an implicit critique against rationalists in the Kantian sense of dogmatists, i.e., those who think we can have metaphysical knowledge that goes beyond the bounds of possible experience. Like Kant, Hegel believes that metaphysical claims need to be 'verified' against the whole range of possible experience, and that as 'scientific' truths they must be actual by appearing in and as the world of experience. It is in this regard that Hegel expresses concern with what he sees as the tendency of abstract understanding as the "activity of differentiating" within reason and essential to it, to prevail against reason itself as the activity of synthesizing/comprehending. Hegel writes:

This analysis, to be sure, only arrives at thoughts which are themselves familiar, fixed, and inert determinations. But what is thus separated and non-actual is an essential moment; for it is only because the concrete does divide itself, and make itself into something non-actual, that it is self-moving. The activity of dissolution is the power and work of the Understanding, the most astonishing and mightiest of powers, or rather the absolute power.⁷

Hegel's immanent critique is concerned in part with this tension within reason itself between the power of abstracting and the power of synthesizing. As some readers have recognized⁸, the activity of abstracting, separating, and differentiating, which is the power of 'understanding' and 'representation' essential to reason itself, becomes a

⁷ Hegel, GWF. *Phenomenology of Spirit*, §32:18.

"malady" when the work of reason is reduced simply to this activity and power. It will be part of Hegel's philosophical task then to show how this 'power' of the understanding is both necessary, and yet transcends itself in a comprehension of the truth as a 'whole'.

According to Hegel, it is the rational in what exists that is the truly actual, actuality being existence mediated and 'subsumed' (*aufgehoben*) by reason. The actual State is rational, and "what is rational must happen since on the whole the constitution is only its development."⁹

Philosophy should be quite clear about the fact that its content is nothing other than the basic import that is originally produced and produces itself in the domain of the living spirit [i.e., the realization of reason], the content that is made into the world, the outer and inner world of consciousness; in other words, the content of philosophy is actuality.¹⁰

The actuality of the State is something that develops in and as history¹¹ as the self-understanding that is 'realized' in and as the ethical life of the community. The actuality of the rational thus realized makes possible the comprehension of the rationality of the actuality in philosophical thought. Thus, as Emil Fackenheim points out, the actuality of the rational as the effective ethical life of the community and its fundamental moral demand "is a specific historical condition; and only if and when that condition exists is the recognition of the rational in the actual a philosophical possibility."¹² Y. Yovel develops this point further, writing:

Hence the historical dimensions of rationality (and actuality), and the fact that, as long as history has not fully realized its essence (freedom), no man can be truly rational, and... no particular man can be an actual individual

⁸ J. Stewart in *Hegel and the Myth of Reason*.

⁹ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.390.

¹⁰ Hegel, GWF. *The Encyclopaedia Logic*, § 6:28-29.

¹¹ Jackson, M. p.21.

¹² Fackenheim, E. p.44.

either.¹³

History is the realization of reason concretely in the world, which philosophy then 'recalls' systematically, presenting and comprehending it as such, showing its 'logical' necessity removed from all contingency. Rationality is the transfiguring principle that makes itself actual in and over time through the concrete rational self-activity by which we, individually and collectively, define ourselves and establish our world. Since it is reason's self-activity that determines actuality from within, as an immanent aspect of being, there is always already reason in what is actual. This sets up within actual ethical life what Yovel refers to as the dialectical principle of all the forms of culture and spirit.¹⁴ Reason is actual as the moral demand effective in ethical life—the actuality of the rational as a principle of action; and the actual is shown to be rational by philosophy that is its own time comprehended in thoughts—the rationality of the actual as a principle of cognition.¹⁵

Within the *Philosophy of Right* then we have a concept of actuality that is historically self-determined reason (i.e., reason as we have determined it); and whether the subject is the world, or the individual, "we are only entitled to speak of the rationality of it through its empirical self-manifestation... What is rational is the universal ground that has been actualized in the empirical world and has thereby gained an actualizing self-manifestation."¹⁶ The meaning of this thesis is nicely outlined in the following passage from Franz Rosenzweig:

"What is rational is actual": immediately from... [A] discussion of the world-historical significance of the Platonic States leaps forth, as if shot from the

¹³ Yovel, Y. p.34.

¹⁴ *Ibid.* p.34-35.

¹⁵ Fackenheim, E. p.43.

¹⁶ Yovel, Y. p.33/34.

pistol, this famous (or infamous) dictum. It has by no means been valid... from all eternity but only since, through Christianity, the Idea of the divine Kingdom on earth has become a moral demand and thus the standard by which all human institutions are to be judged. Since then, however, it has been actually valid. And because for the agent the task of making Reason actual is fixed, cognition has - since then! - the task of examining Actuality - become actual since then! - with a view to discovering how reason has been actual in it. Only because the Rational has become actual - principle of action! - is the Actual rational - principle of cognition! The second half of the dictum, which in contradiction to Hegel's own usage has always been adduced as the kernel of the thought - "Hegel's assertions of the rationality of the Actual" - is thus in fact merely the consequence of the thought, revolutionary in its core, of the actuality of the Rational - a thought-expressed in the first half.¹⁷

This passage indicates how Hegel's famous dictum is to be read in terms of a philosophy of history. "Actuality (*Wirklichkeit*) is the unity, become immediate, of essence and existence, or of what is inner and what is outer."¹⁸ In the *Philosophy of Right* this 'unity' is not an abstract truth but an historical accomplishment.

In reference back to the original quote from the *Encyclopaedia*, we are now able to see how Hegel is able to distinguish actuality from the contingent, the difference playing out in the distinction that Hegel makes between actuality and existence:

When I speak of actuality, one should, of course, think about the sense in which I use this expression, given the fact that I dealt with actuality too in a quite elaborate *Logic*, and I distinguish it quite clearly and directly, not just from what is contingent, even though it has existence too, but also more precisely, from being-there, from existence, and from other determinations.¹⁹

The actual is actual not simply in itself but as it is historically realized. It is historically realized in the midst of and by transcending merely contingent existence. This historically realized actuality of the rational is 'transfigured' by being

¹⁷ Rosenzweig, F. in Fackenheim, E. p.43-44.

¹⁸ Hegel, GWF. *The Encyclopaedia Logic*, § 142:213.

comprehended in philosophy that sets forth the rationality of the actual. The actual is what is rational through and through; for what is not rational must be considered not to be actual, even though existent.²⁰ Actuality, as the concrete positedness of the unity (of rationality and the immediately existent), is the product of a system of genuine movement in which, as Yovel remarks, the essential and the empirical moments mediate one another; in it the empirical externalization of the thing becomes an authentic manifestation of the essential ground.²¹ This genuine movement is the dialectic, and it only makes sense in the case of the subject whose manifestation of the essential ground is the realm of possibility that lies before him or her. It is freedom (as the rationality of) as the defining moment of the individual.

As this concreteness, actuality contains these determinations [i.e., essence and existence, what is inner and what is outer] and their distinction; and it is therefore their development, too, so that they are at the same time determined in it as semblance, or as merely posited (concretely).²²

And it is through these terms that Hegel believed there could be no confusion between the actual and the existent. The actual deals with the unity of the rational and the empirical, whereas the existent deals with the mere appearance of the thing. Fackenheim provides a useful analogy for understanding this when he writes: "God's providence governs the world, and the world is the place where His providence may be recognized."²³ His point is that the 'actual' represents the worldly events that manifest God whereas those that have to do with existence only, contingent and adventitious, do not as such manifest God. Actuality gives true content to true form.

¹⁹ *Ibid.* § 6:29-30.

²⁰ *Ibid.* § 142:213-214.

²¹ Yovel, Y. p.33.

²² Hegel, GWF. *The Encyclopaedia Logic*, § 143:215.

²³ Fackenheim, E. p.45.

Yet as he adds, those who affirm this religious thesis do not hold that all existence whatsoever is indiscriminately God's providence.

The philosophical form alters religious content in that it transfigures the externality which remains between its terms... The rational cannot be exclusively a God external to man and the world...and the actual cannot be exclusively a natural and/or human world... Religious representation... [is] forced to resort to a symbolism in which God, men, and the world have [the] form of mere side-by-sideness. The form of Hegel's philosophical thought transfigures this side-by-sideness into a single, self-explicating, spiritual self-activity.²⁴

Our world is not to be identified nor dissipated into the Idea of God, even though God is its creator and its redeemer.

What we have now to consider is how this concept of the 'actual' relates to my project; that is, how it manifests itself in the State. "The State," Hegel writes, "is the actuality of concrete freedom."²⁵ It is...

on the one hand an external necessity and the higher power to whose nature their (the family, and civil society) laws and interests are subordinate and on which they depend. But on the other hand, it is their immanent end, and its strength consists in the unity of its universal and ultimate end with the particular interests of individuals, in the fact that they have duties towards the State to the same extent as they also have rights.²⁶

According to this conception, as Allan Wood points out, rationality is only able to be fully actualized when we are 'with ourselves' in setting ends that are universal in their scope.²⁷ To reflect back to the content of the *Preface*, it manifests itself as fully actualized freedom whose rationality is not meant to oppose the universal to the particular and individual, rather it is meant to encompass the relationship in a concrete conception of freedom.

²⁴ *Ibid.* p.46.

²⁵ Hegel, GWF. *Elements of the Philosophy of Right*, § 260:282.

²⁶ *Ibid.* § 261:283.

Concrete freedom requires that personal individuality [*Einzelheit*] and its particular interests should reach their full development and gain recognition of their right for itself, and also that they should, on the one hand, pass over of their own accord into the interests of the universal, and on the other, knowingly and willingly acknowledge this universal interest even as their own substantial spirit, and actually pursue it as their ultimate end.²⁷

For it is only through the particular individual that the universal is able to attain validity and fulfillment and it is only by directing the will to the universal that the particular is able to acquire a true sense of individuality. It is as such that the rational universal is realized (as opposed to being just some particular individual's arbitrary notion) in the dialectical relation, i.e., there are no individuals without the State and no State without the individuals. This latter point is crucial since it differentiates Hegel both from abstract individualist views and from the false 'infinite' wherein the individual is simply 'dissolved' into the State. Hegel's thesis undercuts the false dichotomy of what is typically conceived as democracy based on abstract individualism and a totalitarian alternative whereby individuals are suppressed by the internally undifferentiated State imposed upon them. The result is that the State, as the actuality of concrete freedom, provides an end for the particular individual. As Wood writes:

We do not actualize our freedom by entertaining the empty imaginings of moralists, but only by relating ourselves to something real which truly actualizes the power of reason in the world.²⁸

This State (according to Hegel) finds its strength in allowing the principle of subjectivity to attain the truth of its personal particularity within the concrete universal that is the actuality of the rational as the principle of subjectivity/freedom

²⁷ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.xxiv.

²⁸ Hegel, GWF. *Elements of the Philosophy of Right*, § 260:282.

realized and expressed in ethical life. True individuality is realized not in the abstract but within the substantial unity of the ethical community (the State). This unity is an identity of difference, as opposed to the lack of unity in liberal individualism, or the lack of individuality in the indifferent totalitarian identity. It is a unity realized through the principle of subjectivity itself as an actualization of freedom in accordance with the will.³⁰ And it is as such that the State is able to provide a required determinate principle to the will, the intentional structure of the will and its substantial actuality.³¹ "The essence of the modern State," writes Hegel, "is that the universal should be linked with the complete freedom of particularity [*Besonderheit*] and the well-being of individuals."³²

Thus, we have a universal end that, as Hegel reasons, cannot be realized without particular individuals for whom rights exist. The ethical State is founded upon individuals who know themselves to be free; as a manifestation of that freedom, an actuality with rationality as its principle, the *Philosophy of Right* tells how the understanding operative in the life of the community is to be understood. It is the recognition by particular individuals of a universal interest that is their own substantial spirit; to be actively pursued as their ultimate end, it is what Dudley Knowles refers to as a socialibility that molds their goals.³³

Thus, the universal must be activated, but subjectivity on the other hand must be developed as a living whole. Only when both moments are present [*Bestehen*] in full measure can the State be regarded as articulated and truly organized.³⁴

²⁹ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.xxv.

³⁰ Hegel, GWF. *Elements of the Philosophy of Right*, § 260:282.

³¹ Knowles, D. p.304.

³² Hegel, GWF. *Elements of the Philosophy of Right*, § 260:283.

³³ Knowles, D. p.305.

³⁴ Hegel, GWF. *Elements of the Philosophy of Right*, § 260:283.

And it is thus that Hegel is able to write of actuality and avoid the contingency of objects that may have a great relative importance for a certain time and for particular circles. For Hegel's philosophy is essentially historical, comprehending "the process whereby the spirit assumes the shape of events and of immediate natural actuality,"³⁵ a manifestation of the idea that history is the realization of reason in time proceeding to a consciousness of freedom. In it our actions are given rational meaning and truth that is able to transcend our immediate individual motivations, something which Hegel alludes to when he writes: "Representational thought often imagines that the State is held together by force; but what holds it together is simply the basic sense of order which everyone possesses."³⁶ It is one of the crucial concepts for understanding Hegel generally, and the *Philosophy of Right* more specifically. Through history Mankind finds its end in a conception of community that is for the first time fully adequate to the concept, to freedom, and to reason.³⁷

§1.2 Of Freedom

In his interpretation of Hegel, Allen Wood, who is central to this analysis, writes that a person's actions have significance, not through a relation to an abstract moral principle, "but only insofar as they are the actions of someone culturally and historically situated, and give existence to the ethical life of a determinate people at a given stage in its history."³⁸ In other words, to be able to view one's actions in light of their historical significance, one must regard oneself as being a child of one's own

³⁵ *Ibid.* § 346:374.

³⁶ *Ibid.* § 268:288.

³⁷ Taylor, C. *Hegel and Modern Society*, p.96.

³⁸ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.xxv.

time; that is, one's actions are viewed according to the rational standard of right. What Hegel is comprehending is not 'truly' an abstract universal that is in principle actual at all places and times as a timeless ideal; rather, it is the ethical life of a determinate people at a given stage in its history. In Hegelian terms, we have "world history [as] the necessary development from the concept of the freedom of spirit alone, of the moments of reason and hence of [the] spirit's self-consciousness and freedom."³⁹ The fully adequate Idea of freedom (the result of this development) is realized in history through its manifestations as historical civilizations that only comes to fulfillment in our time. Each of these stages, as Charles Taylor claims, is embodied by a certain culture that "labors to bring forth the idea (concept) in the particular stage."⁴⁰ And it does so because societies are not natural forms but human products that are based upon our self-understanding and deliberate (self) activity. Historical change is thus change in our rational self-understanding as this is made concretely actual in ethical life. The history of the spirit, writes Hegel, "is its own deed, for spirit is only what it does, and its deed is to make itself."⁴¹

For Hegel the 'concept' is only able to find completion in the freedom that comes to exist for the individual when he identifies with the institutions and the practices of the community. But of course it would be an inaccuracy to simply reduce freedom to this identification; but such identification does constitute the ultimate context within which my free choices (*Willkür*) are actualized. And as such it is a determined conception of freedom that Hegel is presenting us with (as opposed to being a freedom found in the absence of determinations); it is the freedom of an

³⁹ Hegel, GWF. *Elements of the Philosophy of Right*, § 342:372.

⁴⁰ Taylor, C. *Hegel and Modern Society*, p.97.

ethical life founded upon the idea that I am free with myself in the external which counts as a manifestation of my freedom and activity, a *libertas indifferentiae*. Freedom as simply the absence of hindrance is unintelligible for Hegel. Like many modern philosophers he regards freedom as freedom of the will understood in terms of rational self-determination. Hegel's freedom as rational self-determination gets its concrete meaning from its rational context, the ethical life, in which and for which that freedom is exercised. I am free (or with myself) in my content or determination when, as he reasons, it harmonizes with the practical system that constitutes my self-identity as an agent.⁴² Freedom, as I have pointed out, is unable to exist in a void. Freedom only exists when there are choices open to you significant enough that it makes a difference what you choose. "Thus," as Wood writes, "a Hegelian has reasons for valuing personal or civic freedom that some others (Platonists, Hobbesian egoists, hedonistic utilitarians) do not have."⁴³

As opposed to existing as an absence of hindrance, freedom is actually the capacity of the will that exists only insofar as it is availed of in action;⁴⁴ that is to say, freedom exists as the actualization of one's capacity for rational self-determination in a concrete context.

True independence in relation to an other is achieved... by struggling with otherness, overcoming it, and making it our own. The freedom of the spirit is an independence from the other that is won not merely outside the other but in the other. It comes to actuality not by fleeing before the other but by overcoming it.⁴⁵

My freedom is manifested in the activity of my choice; it provides the object by

⁴¹ Hegel, GWF. *Elements of the Philosophy of Right*, § 343:372.

⁴² Hegel, GWF. in Wood, A. p.49.

⁴³ Wood, A. p.41.

⁴⁴ *Ibid.* p.42.

which the capacity for my freedom is realized and determined. And it is this subjective determination of the individual which finds its fulfillment as ethical actuality.⁴⁶ Freedom, as Wood explains, is the essence of the self to be actualized. He goes on to write:

The kind of freedom that Hegel discusses most often in the *Philosophy of Right* is subjective freedom. The term alludes indirectly to non-interference, but what it directly refers to is a kind of action, one that is reflective, conscious, explicitly chosen by the agent, as opposed to actions performed unthinkingly, habitually, or from coercion. Subjective freedom also includes actions that satisfy the agent's particular needs or interests.⁴⁷

It is a way of acting that determines the will through one's actions alone and it is also a way of acting that opposes determination by external influences. And it is as such that we should understand Hegel when he writes of a "free will which wills the free will."

The absolute determination or, if one prefers, the absolute drive, of the free spirit is to make its freedom into its object - to make it objective both in the sense that it becomes the rational system of the spirit itself, and in the sense that this system becomes immediate actuality. This enables the spirit to be for itself, as Idea, what the will is in itself. The abstract concept of the Idea of the will is in general *the free will which wills the free will*.⁴⁸

Hegel's task is to convince us that absolute freedom is something we can have here and now through the rational comprehension of how the reason in the objective world does not limit, but in fact, actualizes reason in ourselves.⁴⁹ My freedom exists in relation to its content and determination. That is, when my defining elements - the determinate principles made up of the objective world in which I reside - harmonize with the rational system that constitutes my identity as an active agent, I am free.

⁴⁵ *Ibid.* p.45.

⁴⁶ Hegel, GWF. *Elements of the Philosophy of Right*, §153:196.

⁴⁷ Wood, A. p.38.

⁴⁸ Hegel, GWF. *Elements of the Philosophy of Right*, §27:57.

To bring the discussion back to the subject matter of the *Philosophy of Right*, right is a thing which the free will has successfully actualized itself. Right in this sense means freedom objectified.⁵⁰ On the one hand, freedom objectified is a matter of my rational self determination in an object I bring to be. On the other hand, my freedom is objectified not in abstract isolation but as part of a rational community. Only when I determine myself in objective reality that is a communal reality am I free. The constitution and the condition provide for subjective freedom. It is through an individuals work within determinacy that s/he realizes his/her freedom. Thus, it is only as living and therefore as historically and rationally self-determined beings that we are free. Modern ethical life must provide for individual self-satisfaction by enabling the individual to shape and to actualize his/her own determinate principle as part of an ethical community. The ethical State respects the right of the individual and provides for this right in its institutions and practices (its norms).⁵¹

§1.3 Thinking in Context of One's Own Time

"What is rational is actual; and what is actual is rational."⁵² Hegel's task, as I have already argued, is the comprehension of the present and the actual. In this regard, there is a twofold rationale for this Hegel beginning with abstract right. First, the State for Hegel is the totality of ethical life, inclusive of abstract right and morality. The *Philosophy of Right* deals with how this totality is to be truly understood. It carries out this task by means of the comprehension, description, and

⁴⁹ Wood, A. p.44.

⁵⁰ *Ibid.* p.72.

⁵¹ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.xiv.

⁵² Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.20.

immanent critique of the prevailing actuality of the rational. It presents the true Idea of this actuality. Through its comprehension and description of the State, Hegel's philosophy is able to critique the actual practices of actual ethical life in terms of ethical life's own immanent rational standard, now explicitly presented and comprehended by philosophy. Hegel begins with abstract right because that is what, according to the prevailing standard in both ordinary representation and more especially in liberal theory, is thought to be fundamental to ethical life itself. Simply put, an affirmation of the primacy of abstract right reflects the abstract understanding operative in the ethical life of the actual community. Secondly, 'logically' the thought of abstract right is the most immediate way in which the Idea of right is conceived, that is, in terms of the single person giving existence to his freedom in the form of property, wherein right is formal and abstract (cf. *Enz.* §487). It is these two perspectives that Hegel believes come together in his time and thought. In his time, the actuality of the rational is the principle of freedom as effectively recognized in ethical life and liberal theory. Yet, it is recognized first not in its full truth but in terms of the approach that takes abstract right to be fundamental. Moreover, in Hegel's thought, the true account of the Idea of right from the absolute standpoint must 'logically' begin with abstract right as the most immediate thought of right. Thus, both liberal theory and Hegel regard abstract right as the 'logical' beginning, but they have a different conception of what makes this beginning 'logical'.

Hegel begins with abstract right because that is what is thought to be fundamental to ethical life itself. The primacy of abstract right both reflects the prevailing understanding (which Hegel will both preserve and transform by

subjecting to immanent critique) and is 'logically' first because it is the Idea in its most immediate form, i.e., the most immediate way in which right is thought. But, this most immediate way in which it is thought 'logically' doesn't mean that abstract right is the "fundamental" element out of which ethical life itself is built. Rather, abstract right reflects the abstract understanding operative in the ethical life of the community. Thus, the beginning is a correct account, but it is one that will prove to be less than the 'true' since it fails to represent fully the correspondence of the Idea with itself. In the *Encyclopaedia*, Hegel writes:

The definition of the Absolute as the Idea is now itself absolute. All definitions given previously return to this one. - The Idea is the Truth; for truth means that objectivity corresponds with the Concept - not that external things correspond with my representations (representations of this kind are just correct representations held by me as this [individual]).⁵³

As the *Philosophy of Right* presents a thesis about the primacy of ethical life (*Sittlichkeit*), it represents a 'correspondence' in which mankind's highest achievements are expressed in the larger order to which we belong. As this relation (between the individual's rational self-activity and the transcending rationality of the State) human consciousness does not only reflect the order of the larger whole, but it completes and perfects it.⁵⁴ "The cosmic spirit," Taylor writes, "which unfolds in nature is striving to complete itself in conscious self-knowledge, and the locus of this self-consciousness is the mind of man."⁵⁵ Through this correspondence the individual becomes a vehicle whereby the transcending rationality of the State completes itself, achieving its fullest expression in the rational self-awareness of the subject. Simply put, the individual's rational self-determination as a free individual is one with the

⁵³ Hegel, GWF. *The Encyclopaedia Logic*, § 213:286.

⁵⁴ Taylor, C. *Hegel and Modern Society*, p.10.

prevailing rationality of the whole. The rational self-consciousness grasps this concept both transcendently and as one with its own spirit. And in such fashion, the individual is able to understand himself as the vehicle for the transcending rationality of the State. "And hence," as Taylor writes, "man can achieve at once the greatest unity with nature, that is, with the spirit which unfolds itself in nature, and the fullest autonomous self-expression."⁵⁶ This is achieved through what the text presupposes, the rational self-consciousness as an historical condition whose actuality of the rational is also its condition, for it makes the time ripe for philosophy to become a science. It provides an examination of right as it is presently actual from the absolute standpoint; its task, to "lay bare the rational foundation of the real, and through this identification the rational State will come to completion."⁵⁷

The truth that the *Philosophy of Right* articulates about rights, ethics, and the State, requires that they be explicitly grasped in philosophical thought so that reason is able to be reconciled with reality. Yet through philosophy's comprehension (i.e., the rationality of the actual) the actuality of the rational undergoes real movement. Philosophical comprehension does not just mirror the actuality of the rational but transfigures it by realizing it as a complete truth. And, as I have previously reasoned, it is a transfiguration by reason of actuality, the comprehension of the rational structure of the State as it exists in principle for our time, but as of yet to be fully comprehended in its truth. This 'truth' represents more than just the factual reality of human institutions for it is a transcending rational truth. But a truth still to be discovered *in* the real and factual State; for ethical content needs to be comprehended

⁵⁵ *Ibid.* p.10.

⁵⁶ *Ibid.* p.11.

explicitly and self-critically so that the content that is rational in itself may gain a rational form and appear justified to free thinking.⁵⁷ In this way, Hegel's philosophy can claim to be a philosophy that is a system of true insight because it is the rationality of a historical actuality.

In the light of the preceding discussion of actuality, rationality and history, it will be useful now to return to the issue with which we began. To recall, Hegel writes:

Hic Rhodus, hic Saltus. To comprehend what is the task of philosophy, for what is, is reason. As far as the individual is in any case a child of his time; thus philosophy, too, is its own time comprehended in thoughts. It is just as foolish to imagine that any philosophy can transcend its contemporary world as that an individual can overleap his own time or leap over Rhodes.⁵⁹

The quote advances the point that philosophy is historically situated; philosophy comprehends the times' fundamental ideas, and as I have shown, if it becomes so bold as to go beyond the world in which it exists it is left dealing with "an unsubstantial element where anything you please may, in fancy, be built."⁶⁰ Thus the *Philosophy of Right* is not about a State as it ought to be, but rather the State and the ethical universe as it actually is and is to be understood, the demand of this understanding being summarized in Hegel's *Preface* to the *Philosophy of Right* with the phrase: 'Here is the rose, dance here'. It is an elaboration by Hegel on his pun on Rhodes (*Rhodus*), expressed in the following terms:

What lies between reason as self-conscious spirit and reason as present actuality, what separates the former from the latter and prevents it from finding satisfaction in it, is the fetter of some abstraction or other which has not been liberated into [the form of] the concept. To recognize reason as the

⁵⁷ *Ibid.* p.124/125.

⁵⁸ Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.11.

⁵⁹ *Ibid.* Preface p.21-22.

⁶⁰ Hegel, GWF. *Philosophy of Right*, p.11.

rose in the cross of the present and thereby to delight in the present - this rational insight is the reconciliation with actuality which philosophy grants to those who have received the inner call to comprehend.⁶¹

The analogy expresses an achievement of reconciliation between reason and reality; the cross being the crucible of present reality, the world in all of its discord, fragmented and irrational. It is the rose, realized in and through this discord and overcoming it, that is the truth. As both the concept of reason and the division that is conquered by it, it tells of the reconciliation that philosophy achieves.⁶² As Peperzak points out, 'what is' becomes the same as reason, regarded in a very specific way, as the realization of the true idea (as actuality). It is "only from this perspective... [that Hegel can] say that the [actual] is also necessarily rational."⁶³ Philosophy tells us of a rationality that has come to be immanent in the world; and everything that has preceded the full realization of the actuality of the rational is only a partial realization of the true idea of the State and the world.

Whoever raises himself above the political and philosophical realizations of his time and wishes to pass judgment from a super temporal viewpoint, like a god, is a braggart: he over estimates his possibilities and takes a contingent option for an eternal truth.⁶⁴

Hegel's rationality enters upon the scene simultaneously with the moment of the actualization of external existence.⁶⁵ Actuality 'is' as it is determined (remembering that freedom, for Hegel, instead of being an absence of determination, is freedom as rational self-determination); it is a truth that Hegel could only view and interpret from the end of history. As Peperzak writes:

⁶¹ Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.22.

⁶² Peperzak, A. p.109/110.

⁶³ *Ibid.* p.105.

⁶⁴ *Ibid.* p.106/107.

⁶⁵ Hegel, GWF. *Philosophy of Right*, p.10.

Each philosopher is naturally limited in the scope of his perception by the historical context of his own existence... Hence philosophy is also always an adequate testimony to its generation, and each successive generation standing as it were, on the shoulders of its predecessors, is in a better position to comprehend its own actuality.⁶⁶

The *Philosophy of Right* can be seen as an attempt "to comprehend and portray the State as an inherently rational entity."⁶⁷ It is a doctrine of how right, the State, and the ethical universe are to be understood, the recognition of reason as being a 'rose in the cross of the present'.

If philosophy is then nothing else than its own time apprehended (*Erfassen*) in thought, then there is a curious corollary to it: if a philosopher can only comprehend that which is, then the very fact that he has comprehended his historical actuality is evidence that a form of life has already grown old, since only the fully developed can be philosophically comprehended.⁶⁸

The wisdom that it expresses is one that is only acquired with time, that which Hegel refers to as a wisdom of 'ripeness'. Hence, Hegel's famous phrase: "The owl of Minerva begins its flight only with the onset of dusk."⁶⁹ Explained (by Avineri) as a seemingly quietist sentence, it speaks of resignation and conservatism. But in it lies a hidden and critical message of the role to be played by philosophy; although it cannot change the world, only interpret it, it is by this very act of interpretation that it changes it. It tells the world that its time is up.⁷⁰ In an essential sense, the time of the *Philosophy of Right* is one in which time is up once and for all, since there is no new essential possibility. The realization of a time's rationality can only exist after it has passed; to be able to speak of its determinations, or norms (of its institutions and its

⁶⁶ Avineri, S. p.128.

⁶⁷ Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.21.

⁶⁸ Avineri, S. p.128.

⁶⁹ Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.23.

⁷⁰ Avineri, S. p.130.

practices), is to speak of what has already been.⁷¹ Its wisdom lies in its having come upon the scene late, in being the thought of the world that only happens when actuality already 'is', and after it has passed.

When philosophy paints its grey in grey, a shape of life has grown old, and it cannot be rejuvenated, but only recognized, by the grey in grey of philosophy; the owl of Minerva begins its flight only with the onset of dusk.⁷²

As the thought or the concept of the actual, the historical world must be given in experience before it can be comprehended. Philosophy itself becomes an exponent of the world, and of time, which is brought to an understanding of itself in philosophy.⁷³ The fact that the world can be, and is, reflected as a coherent system is proof that its realization has been completed. It represents not a prophecy, but remembrance. Minerva's owl begins its flight only with the falling of dusk. As Koyré has written, it is only at dusk that the Owl of Minerva begins its flight that the essential condition for Hegel's writing can be realized. History has effectively ended, and it is because of this that he could – had been able to – complete his system.⁷⁴ In that time exists as an empirical concept for Hegel, it would make sense that it too, like the empirical, must come to an end. Both the immanence of the critique and the nature of philosophy for Hegel require that they be undertaken from the point at which life has grown old.

Dusk, rather than being used in the common and somewhat pejorative sense, is used to signal the consummation of history; for it is only in this stage that the

⁷¹ This accords with Hegel's technical definition of *Wesen* as *Gewesen*, in Miller. *Science of Logic*, p.389.

⁷² Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.23.

⁷³ Peperzak, A. p.115.

⁷⁴ Koyré in Grier, P.T. p.188.

standpoint of absolute knowledge can be achieved. The *Philosophy of Right* is a conclusion; its State is the end of a past history,⁷³ and its context therefore is its own time. It is the end of history itself, not in the absurd sense that empirical history ends, but in the essential sense that there is in principle no new truth to be realized. It is the actuality of the rational as the principle fully realized in an ethical life.

§1.4 The Actuality of an Abstract Rationality:

Because Hegel's thesis is on the primacy of ethical life (*Sittlichkeit*), what is most important to it (and therefore to mankind) is that which can only be attained in relation with the whole (the subject to its community). Of course the truth of this claim rests on its demonstration in the discussion of abstract right. Otherwise, as Hegel himself would say, you have one bare assurance of truth (the liberal contractarian view) set against another assurance (the holistic Hegelian view), each worth as much or as little as the other. The idea of community that Hegel is putting forth entails more than that of the liberalists' conception. Ethical life represents more than merely a guarantor of individual liberties, the existence of which is anchored in something separate from the State; it must, as Wood points out, be coterminous with the minimum self-sufficient human reality - the State. This is crucial to the thesis because, as has already been mentioned, the norms and the ideas that the State expresses are not just of human institutions; they express the Idea as the very ontological structure of things. The underlying idea here is that we are what we do; and what we do is realize reason, the ultimate objective form of which is the State. The nature of our reality (ontologically) is inseparable from the manifold ways in

⁷³ Peperzak, A. p.115/116.

which historically we constitute it rationally. The necessary course of that rational (self) constitution is intrinsic to the process from the outset but needs to be realized in order *to be* actual. When it is fully (in the sense of rationally) constituted we have the modern State; it represents the actuality of a reason that has come to be realized. And it is thus that the State is subject to critique in terms of its immanent rationality, that while it may be correct it is not yet fully realized in its truth. The State itself represents a genuine movement in thought where the human subject and its relation to society (as I have argued) are embedded in a historicized rationality, its content manifested in its determinations as an expression of the times most fundamental ideas. It is thus that we are able to philosophize about it. For the thought of the world only appears "at a time when actuality has gone through its formative process."⁷⁶

When we turn to the concept of abstract right with which the *Philosophy of Right* begins we are presented (as I will show) with the right of the individual that defines its identity principally by the abstract determinations of the particular. Abstract right as such has no actual determinacy and hence has existence but not true actuality. Not to be confused with a timeless self-understanding, it represents an historical accomplishment. It is the right of the particular, an existence that is manifested negatively in its relation with others; common to all people of the time it represents an abstraction from the truth of the whole. Hegel begins with it because that is what is thought as being fundamental to ethical life itself; it is how the principle of freedom/subjectivity is currently understood both in life and by liberal theory, thus 'logically' abstract right is the most immediate thought of right.

⁷⁶ Hegel, GWF. *Elements of the Philosophy of Right*. Preface p.23.

It is important to come to terms with the fact that what is presupposed as the subject matter of the analysis is the actuality of the rational as a historical condition. The discussion of abstract right presupposes that which is only fully comprehended as a whole. It presupposes an actuality of the rational that is in principle realized already in the world but is transfigured and realized in its truth as an ethical whole by being comprehended in thought. The particular achieves its individuality and determination within the rationality (substance) of the State; it is a rationality that cannot be stepped beyond for it is historically conditioned as the prevailing rationality, that is, the realization of reason in the world *is* history. Historical change consists then in the resolving of contradictions within the prevailing rationality, not the realization of a new State according to a transcendent timeless ideal. The prevailing rationality, which individuals embody, is the determinate principle of their freedom.

Thus, as S. Avineri has written, the prevailing actuality is the actualization of reason as an element of self-consciousness. Society's institutions, he reasons, are not external coercive organs but are rather extensions of our self-consciousnesses.⁷⁷

It (the State) has its immediate existence [*Existenz*] in custom and its mediate existence in the self-consciousness of the individual [*des Einzelnen*], in the individual's knowledge and activity, just as self-consciousness, by virtue of its disposition, has its substantial freedom in the State as its essence, its end, and the product of its activity.⁷⁸

According to the liberal view, the abstract right of the individual is determined by the particularity of individual self-interest, based on a view of the rationality of the abstract individual. And as I have been claiming, Hegel himself begins with this view because first it is what is now actually believed to be fundamental to ethical life and

⁷⁷ Avineri, S. p.181.

⁷⁸ Hegel, GWF. *Elements of the Philosophy of Right*, § 257:275.

second because the notion of 'abstract right' is what is 'logically' most immediate and least determined. The thesis of abstract right arises where rationality is based upon the primacy of the individual and therein fails to identify with the ethical whole. Even at this preliminary stage of the text, it is not rationality's existence that Hegel sees fit to question, but the degree to which rationality (in this case, the primacy of the individual) is manifested in a civil society as the prevailing understanding of the time. For, as I have argued, reason reflects the understanding operative in the ethical life of the community; it expresses the prevailing rationality that is manifested in the concepts and determinate principles of the time: it is an expression of the formal and universal that renders it actual and determinate. In the case of the abstract it is an analysis of the person as s/he exists in a legal sense, with his/her historical origins existing within the time's institutions and making up the formal and generic element that is constitutive of the time's rationality. Abstract right occurs when people think of themselves as individuals, for doing so necessarily entails that they think of themselves in a negative and exclusive relation to others. I am arguing that it is primary because it is constituted by the same negativity that allows me to differentiate between myself and the contingencies that are the world; that is, the most basic element of our consciousness. As Hegel writes:

Personality begins only at that point when the subject has not merely a consciousness of itself in general as concrete and in some way determined, but as a consciousness of itself as a completely abstract 'I' in which all concrete limitations and validity are negated and invalidated.⁷⁹

And it is thus that Robert Williams is able to write:

The very abstraction that uncovers the abstract universal legal person also individuates that person as a private person... The abstract person is formal,

⁷⁹ Hegel, GWF. Elements of the Philosophy of Right, §35:68.

individual, and private. Hegel brings out this formal individualism by noting that in the abstract person, the immediate will is a negative, exclusive will, a will that excludes others.⁸⁰

The primacy of abstract right is expressed in Hegel's discussion of the Romans. For it is in them, that he reasons, we find those that proceed from the principle of abstract inwardness, realized as personality in a system of private law. This private law means that the person as such counts in the reality that s/he gives to him/herself. Abstract right is the organism of the State that has dissolved into the atom, and the primacy, of the individual.⁸¹

⁸⁰ Williams, R. p.136.

⁸¹ Hegel, GWF, in Williams, R. p.136.

Chapter II - The Rationality of Abstract Right

Hegel's discussion of abstract right subjects the thesis of abstract individualism to immanent critique. The thesis of abstract individualism represents the current actuality of ethical life as it understands itself. It is this actuality that Hegel seeks to comprehend in its truth.

In this regard, the 'logical' argument of the *Philosophy of Right* has the following structure:

1. The reality in general in which free will has its existence is 'right'. This reality has three moments: abstract right; morality; ethical life. The *Philosophy of Right* presents the essential determinations of these three moments in 'logical' order as a progress of thought.
2. In presenting the essential determinations of free will as right in 'logical' order, the *Philosophy of Right* begins in the introduction by discussing how free will has existence as right. It then starts in abstract right by asking how, logically, the existence of free will as right is first thought. Asking that question already abstracts from the concrete actuality of the rational that is current ethical life. It starts with the thought of self as empty self-consciousness, the pure I, as pure abstract universal, in relation to a world as other, an externality in which and against which it realizes itself. (The logic of this movement is that a pure undifferentiated 'I' is unthinkable. The I can only think itself as such in relation to the not-I). This pure abstract universal

'I', which is indeterminate in itself, encounters determinacy in the external other, the material world, and realizes itself and gives itself content as a singular will that appropriates particular aspects of the external world as property. It is central to Hegel's project to show that this form of the free will transcends itself and leads 'logically' to the realm of *morality* (cf. §104), and from there to *ethical life*.

By beginning with abstract right and abstract individualism, and comprehending it philosophically (i.e., in its complete truth), Hegel establishes the minimum notion of concrete right and the concrete individual; but not one sufficient in itself to the Idea of right nor sufficient to transform the actuality of the rational 'truly'. Hegel thus is not just offering counter-arguments against the liberal individualist conception of rights and society but is subjecting it to an immanent critique in order to show both how and in what respects it is correct and yet how ultimately it falls short of the complete truth. The argument of abstract right is meant to show what is correct in the abstract conception of abstract right and yet how this understanding transcends itself. Hegel's point is not to reject the idea of abstract and private right altogether, but rather to show how it is truly accommodated in a complete and true understanding of the actuality of ethical life. The *Philosophy of Right's* subject matter is the very idea of right; it deals with both the concept and the actualization of that concept, and its truth lies in the coherent presentation and comprehension of the rational understanding of right that is actual in the world.

§II.1 Abstract Right

Philosophy awakes in the Spirit of government and nations the wisdom to discern what is essentially and actually right and reasonable in the real world.¹

Hegel, it must be remembered, is not providing a theory of how things ought to be in a traditional rationalist form; rather, he is providing us with an immanent critique of how things actually are, and specifying how they should be according to their own immanent rational standard. Starting with the individual, the actuality of the rational is assumed as the basis for demonstrating in all its stages, the rationality of the actual. The actuality of the free rational subject is developed throughout the text.

The section on abstract right begins: "Der an und fur sich freie Wille, wie er in seinem *abstrakten Begriffe* ist, ist in der Bestimmtheit der Ummittelbarkeit."² It is translated by Nisbet as "The will which is free in and for itself, as it is in its *abstract* concept, is in the determinate condition of immediacy."³ What is important to take note of is that Hegel begins with the "abstract concept" (*abstrakten Begriffe*), that is, with the thought of the will as simply free in and for itself. This is the thought of the will in its most "immediate determination," the pure thought of it simply as such. Hegel writes:

Indeterminacy is itself a determinacy. For indeterminacy consists in there being no distinction as yet between the will and its content; but indeterminacy itself, when opposed to the determinate, takes on the determination of being something determinate; it is abstract identity which here constitutes its determinacy; the will thereby becomes an individual will - the person.⁴

¹ Hegel, GWF. *Philosophy of Mind*, §552:285.

² Hegel, GWF. *Grundlinien Der Philosophie Des Rechts*, §34:51.

³ Hegel, GWF. *Elements of the Philosophy of Right*, §34:67.

⁴ *Ibid.* §34:67.

Hegel is having fun here with the concept of an indeterminate determinacy, since indeterminacy is no determination at all, which then suggests that this conception is self-contradictory. It indicates that the required "distinction is not present initially... there is no progression or mediation of the first stage of abstract unity where the will has the form of immediacy of being."⁵ It, "in contrast with reality, is its own negative actuality, whose reference to itself is purely abstract - the inherently individual [*in sich einzelnen*] will of a subject."⁶ It is useful to remember that the *Philosophy of Right* is providing neither an anthropology nor phenomenology of the will, but the logic of the Idea of right, which Hegel himself is examining from an already demonstrated standpoint of absolute knowledge. This demonstration is given in the *Phenomenology*, which itself is dependant upon the time being ripe for philosophy to become a science. He writes:

When I say that the will which is free in and for itself, as it is in its abstract concept, is in the determinate condition of immediacy, this should be understood as follows: The completed Idea of the will is that condition in which the concept has full realized itself and in which its existence [*Dasein*] is nothing but the concepts own development.⁷

According to this reasoning, the abstract concept as such offers no essential dichotomy between the will and what the will takes itself to be. The will has being only in itself, and it is only determined according to itself. This pure self-relation affords no determinacy to the will, which must then come from the setting of ends and the appropriation of things in the external world. Thus we require determinate principles, which we find with abstract right.

⁵ *Ibid.* §34:67.

⁶ *Ibid.* §34:67.

⁷ *Ibid.* §34:67.

Abstract right comes into effect when the right (or freedom) of the will is determined against something 'other'. It is a matter of the will's inward sense of freedom finding its fulfillment in an external thing. But, as Hegel will show, the concepts at work in abstract right are inadequate to comprehending the truth of free will, an inadequacy demonstrated by considering 'logically' the understanding at work in abstract right, but where the understanding of the will and the being of the will are not separate. As we shall see later, the relation here between the determinate thing and the will is external and arbitrary. But the rationality of the actual will that constitutes the immediate actuality of right must transcend this externality and arbitrariness, if the truth of abstract right is to be realized. This truth explained by Hegel in general in the following terms:

What does this truth require, inasmuch as the thinking mind [*Geist*] is not content to possess it in this proximate manner? What it needs is to be comprehended as well, so that the content which is already rational in itself may also gain a rational form and thereby appear justified to free thinking. For such thinking does not stop at what is given, whether the latter is supported by the external positive authority of the state or of mutual agreement among human beings, or by the authority of inner feeling and the heart and by the testimony of the spirit which immediately concurs with this, but starts out from itself and thereby demands to know itself as united in its innermost being with the truth.⁸

Abstract right begins then with an empty formalism in which the thought of the will is one of indeterminate immediacy. But as I have said, the will is only actual in and through its self-determination; its freedom cannot exist in a vacuum with an absence of determinacy. The issue for Hegel then is twofold: how does the will in its abstract formal concept get its determinacy in the logically most immediate way; and

⁸ *Ibid.* Preface p.11.

how is it that the will that determines itself in this logically immediate way adequate to its own concept as free? The answer that Hegel gives is that it gets its determination by appropriating things in the external world (property), and as essentially determined in relation to this element of externality (the content of the will as determining itself in relation to a given external other) it is not adequate to the true concept of the will as free. Abstract determination is the rationality that has transfigured the most immediate form of actuality, and its use by Hegel demonstrates (reasoned from the context of the whole that ethical life represents) the inadequacy and arbitrariness of a rationality that through an arbitrary determination has existence, but no true actuality.

To summarize then: It is as formal universality that 'logically' the will is first thought, but to give the will, thought in this way, determinate content, it must be thought in relation to an external, material world. "The free will itself at first [exists] immediate and hence as a single being – the person: the existence which the person gives to its liberty is property. The Right as right (law) is formal, abstract right."⁹ The will's immediate fulfillment is found in an external thing and the subject is determined and thus determines itself in all respects in relation to its immediate external existence [*Dasein*]. Considered formally and abstractly it is 'infinite', a totally pure self-reference. Yet it is in and through its finite determination in relation to external things that it knows itself in its finitude as infinite, universal and free.¹⁰ What Hegel is dealing with, in terms of this immanent critique, is the "very principle on which the distinctive character of [the] Idea turns, the pivot on which the

⁹ Hegel, GWF. *Philosophy of Mind*, §487:243.

¹⁰ Hegel, GWF. *Elements of the Philosophy of Right*, § 35:68.

impending world revolution turns: What is rational is actual; and what is actual is rational."¹¹ The will knows itself as infinitely free in its very relation to contingent external things, the content of the determinate will depending upon this relation to contingent externality. The will as purely free is thus at odds with itself as immediately determined and determinate. The person is a subject aware of his subjectivity, and as this person "I know myself as free in myself, and I can abstract from anything... yet as this person I am wholly determinate."¹² This thesis exemplifies a more general point about Hegel's reasoning.

For what matters is to recognize in the semblance of the temporal and transient the substance which is immanent and the eternal which is present. For since the rational, which is synonymous with the Idea, becomes actual by entering into external existence [*Existenz*], it emerges in an infinite wealth of forms, appearances, and shapes and surrounds its core with a brightly colored covering in which consciousness first resides, but which only the concept can penetrate in order to find the inner pulse, and detect its continued beat even within the external shapes.¹³

According to Hegel's argument the individual will is not simply given, as liberal theory holds, but is 'realized' as individual and thus becomes 'mine' through a double movement. In other words, the action of the will on external things both makes the pure free will in its immediate indeterminacy my determinate free will acting here and now and as well makes the contingent external thing acted upon here and now my property. It is the work of the will on a 'thing' that at once determines both the will and the thing as 'mine'. As Hegel explains in the *Philosophy of Mind*, it is this twofold possession, with its dual predication of 'mine' that becomes a basis for rights. But in this initial form of right, it is still a matter of indifference in relation to

¹¹ *Ibid.* Preface p.20.

¹² *Ibid.* § 35:68.

¹³ *Ibid.* Preface p.29-21.

what a person affirms his capacity for rights against. But the 'I' does require the determination of right. "This thing – as something devoid of will, has no rights against the subjectivity of intelligence and volition, and is by that subjectivity made adjectival to it, the external sphere of its liberty; - possession."¹⁴ Right, at this moment, represents nothing more than a permission or warrant of the individual in his identity as a free and independent being. And due to the nature of its abstractness, it remains limited to the realm of the negative.¹⁵ "The person is brought into union with itself with the thing (property) – but as the thing is abstractly external, the 'I' is also abstractly external."¹⁶

To recount what has brought us to this point, the subjective will as pure indeterminate freedom and self-reference is actual only as it is determinate and determines itself. But it determines itself not purely in and for itself as pure freedom, but in relation to contingent externality that it makes its own. In its actuality then it is a union of the 'finite' and the 'infinite', or of "the determinate boundary and the completely unbounded."¹⁷ In this union, the person obtains a capacity for rights, but it is a capacity for rights that Hegel demonstrates to be inadequate to the concept of right based on our freedom. The conception of freedom that Hegel holds is one of an actualized will linked with determination, and it is only in this determination (which Hegel will come to refer to as duty) that we can be free. For Hegel, a pure indeterminate freedom, the freedom of a void, can only be and be thought in abstraction from the actuality of determinate freedom. To take indeterminate freedom

¹⁴ Hegel, GWF. Philosophy of Mind, §438:178.

¹⁵ Hegel, GWF. Elements of the Philosophy of Right, §38:69.

¹⁶ Hegel, GWF. Philosophy of Mind, §490:244.

¹⁷ Hegel, GWF. Elements of the Philosophy of Right, §35:68.

as the starting point and basis for a doctrine of rights is to misunderstand the nature of freedom and hence the nature of right.

In the *Encyclopaedia* Hegel writes: "It is a duty to possess things as property, i.e. to be as a person; which, in the relation of appearance, positing the reference to another person, develops itself into the duty of the other to respect my right."¹⁸ Although it is in these terms that the will as such has achieved personhood, and personhood is the highest achievement for the human being, at this stage there is according to Hegel still something contemptuous about it, that is, its essential arbitrariness. In the *Phenomenology*, Hegel writes:

Personal independence in the sphere of legal right is really a similar general confusion and reciprocal dissolution of this kind. For what counts as absolute, essential being is self-consciousness as the sheer empty unit of the person... The formalism of legal right is thus by its very nature without a peculiar content of its own; it finds before it a manifold experience in the form of 'possession' and, as Skepticism did, stamps it with the same abstract universality, whereby it is called property... The positive value (of legal right)...consists in its being mine in the sense of category, as something whose validity is recognized and actual. Both are the same abstract universal... The content belongs, therefore, to an autonomous power, which is something different from the formal universal, to a power which is arbitrary and capricious. Consciousness of right, therefore, in the very fact of being recognized as having validity, experiences rather the loss of its reality and its complete inessentiality; and to describe an individual as a 'person' is an expression of contempt.¹⁹

The particularity of the will is a moment within an entirety that requires a determination. But the will is arbitrary in what Hegel reasons as being the casual aspect of property. "I place my will in this 'thing'; [but] so far as my will is arbitrary, I can just as well put it in as not."²⁰ It is a matter of indifference, a rationality of the

¹⁸ Wood, A. in Hegel, GWF. *Elements of the Philosophy of Right*, p.404.

¹⁹ Hegel, GWF. *Phenomenology of Spirit*, §480:291-292.

²⁰ Hegel, GWF. *Philosophy of Mind*, §492:245.

world that is determined in relation with the arbitrary and the external. And thus abstract right is reasoned by Hegel as being a determination that lacks true actuality; it is a determination that can never fully be one with the universal concept. It really is a matter of indifference, i.e. what the abstract individual determines himself against. "Abstract right is initially a mere possibility, and in that respect is formal in character as compared with the whole extent of the relationship."²¹ Consequently, it is a conception of rights and freedoms that lack actuality; except that is, in being concretely actualized in determinate ways, ways that in their particularity have no absolute necessity.

"The resolving and immediate individuality [*Einzelheit*] of the person relates itself to a nature which it encounters before it."²² It is nothing more. Man is left standing in an opposition with the external world confronting him, his drive being the potential "overcoming" [*aufzuheben*] of its determinate limitation, the drive to posit his existence as his own.²³ As will be recalled from previous chapters, Hegel's thesis is that in his time the union of reason and reality, heaven and earth, has in principle been realized in the ethical life of the modern State. It is that condition which makes the time ripe for philosophy to become science. The ruling principle of the modern state is the freedom of all, the unconditioned worth of the individual. However, in that ethical life itself, such is the power of the understanding that this principle is thought too abstractly both by self-centered individuals in that life and by the liberal theorists, who seek to justify it. And it is from the absolute standpoint

²¹ Hegel, GWF. *Elements of the Philosophy of Right*, § 37:69.

²² *Ibid.* §39:70.

²³ *Ibid.* §39:70.

Hegel then proceeds to examine the Idea of right, not in terms of the actual ethical life of modern states or liberal theory, but 'logically' in terms of how this idea is truly to be thought. This examination is not an 'ought to be' imagined construction removed from life, but a 'logical' examination that presupposes the actuality of the rational that is the modern State. He begins with what he feels to be the most immediate form of right - abstract right as a right of determination; this right of the rational is a right of possession, but it is also an arbitrary right of indifference with respect to what of the external world is possessed. A freedom, as Hegel explains it, of the individual who relates only to himself and as a being standing over against the world. "Every stage is in fact the Idea, but the earlier stages contain it only in more abstract form. For example, even the 'I' as personality is already the Idea, but in its most abstract shape."²⁴

§II.2 – Abstract Right as a Means of Critique

Hegel's discussion of abstract right is, explicitly, an exposition and immanent critique of the concept of abstract right as this arises from the concept of the free will thought through 'logically'. The measure of the immanent critique is the adequacy in abstract right of the concept of the free will with itself. Implicitly, this serves too as an immanent critique of the prevailing understanding in ethical life and its liberal theory. Hegel's discussion begins with the logically immediate thought of the will and right and shows how this understanding is inadequate on its own terms, inadequate to the concept of will as free. Of course Hegel cannot simply assume that

²⁴ *Ibid.* §129:157.

this understanding is inadequate on the basis of his full-blown theory simply assumed to be true. Rather he must demonstrate its inadequacy by providing the rational account of the actuality of the free will in abstract right and showing that its actuality is inadequate on its own terms, i.e., inadequate to the concept of free will. Abstract right involves a 'logical' comparison of the immediate concept of the will with its immediate determination. The inadequacy of the abstract understanding of abstract right involves what Hegel regarded to be one of the "commonest errors of abstraction, [the insistence placed] on private rights and private welfare as [being] valid in and for themselves in opposition to the universality of the state."²⁵ He exposes this error in the light of his immanent critique of the idea of abstract right in terms of the concept of free will.

A person requires first an external sphere of freedom in order that his free will be determinately actual. This external sphere of freedom as something external to free will provides the material of an immediate determination that is immediately different and separable from the will in itself. -"The abstract personality in its very immediacy can have no other existence [*Dasein*] than in [its] determination of immediacy."²⁶ But as abstract it represents an empty formalism in which nothing links the determinacy with the subject; it is a rationality that...

in its most basic determination, [is a] commandment of right [as] merely a prohibition. Contract and wrong do admittedly begin to have a reference to the will of others - but the agreement which is concluded in the former is based on arbitrariness; and its essential reference to the will of the other is, in terms of right, a negative one.²⁷

²⁵ *Ibid.* §126:154.

²⁶ *Ibid.* §41:71.

²⁷ *Ibid.* §113:140-141.

The external exists as a thing, unfree, and without rights; it is something devoid of will, representing merely an external sphere to liberty. And this is why Hegel concludes the section *Abstract Right* by reasoning:

Rights of every kind can belong only to a person, and seen objectively, a right based on contract is not a right over a person, but only over something external to the person or something which the person can dispose of, i.e. always a thing.²⁸

When we contrast this what Hegel refers to as the purposive action of the subject...

[That is] to realize its concept, liberty, in their externally objective aspects, making the latter a world molded by the former, which in it is thus as home with itself, locked together with it: The concept accordingly perfected to the idea.²⁹

we see how it falls short. The rationality of the actual at this moment is revealed, by Hegel, as being nothing more than a right of appropriation; it is the supremacy of a will over a thing, a demonstration that this thing does not have being for itself, nor represents an end in itself. It is a right that is actual only in the exercise, only in and through appropriation.

In property, my will is personal, but the person is a specific entity [*Dasein*]; thus, property becomes the personal aspect of this specific will. Since I give my will existence [*Dasein*] through property, property must also have the determination of being this specific entity, of being mine.³⁰

Following on the heels of the above quote, Hegel writes that, "insofar as the body is immediate existence [*Dasein*] it is not commensurate with the spirit."³¹ And thus furthers the point that what the immediate thought of the will and right is made up of is nothing more than the purely contingent and superfluous. "The human being,

²⁸ *Ibid.* §40:72.

²⁹ Hegel, GWF. *Philosophy of Mind*, §484:241.

³⁰ Hegel, GWF. *Elements of the Philosophy of Right*, § 46:78.

³¹ *Ibid.* §48:79.

in his immediate existence [*Existenz*] in himself, is a natural entity, external to his concept."³² Simply put, right in the abstract is not in conformity with its concept. The *Addition* to § 75, although long, is worth citing in its entirety. In it Hegel not only gives voice to what I have been arguing, but also indicates the subject of which abstract right is an immanent critique of.

In recent times, it has become very popular to regard the state as a contract of all with all. Everyone, we are told, makes a contract with the sovereign, and he in turn with the subjects. This view is the result of superficial thinking, which envisages only a single unity of different wills. But in a contract, there are two identical wills, both of which are persons and wish to remain owners of property; the contract accordingly originates in the arbitrary will of the person - an origin with marriage also has in common with contract. But in the case of the state, this is different from the outset, for the arbitrary will of individuals [*Individuen*] is not in a position to break away from the state, because the individual is already by nature a citizen of it. It is the rational destiny [*Bestimmung*] of human beings to live within a state, and even if no state is yet present, reason requires that one be established. The state itself must give permission for individuals [*Einzelne*] to enter or leave it, so that this does not depend on the arbitrary will of the individuals concerned; consequently, the state is not based on contract, which presupposes an arbitrary will. It is false to say that the arbitrary will of everyone is capable of founding a state. The great advance made by the state in modern times is that it remains an end in and for itself, and that each individual may no longer base his relationship [*Beziehung*] to it on his own private stipulation, as was the case in the Middle Ages.³³

Abstract right, even under the guise of contract, remains the product of an arbitrary will. Rather than being a will which is universal in and for itself, the object of contract remains an individual and external thing.³⁴ It comes into play when one withdraws one's will so that the 'thing' can pass to another. It concerns that which Hegel refers to as two wills and their agreement; the result of which is the giving of

³² *Ibid.* §57:86.

³³ *Ibid.* §75:106.

³⁴ *Ibid.* §75:105.

substantial being to the contract itself.³⁵ "[And] since they are immediate persons, it is purely contingent whether their particular wills are in conformity with the will which has being in itself."³⁶ In *Contract*, Hegel writes, "the consenting parties... retain their particular wills; thus, contract has not (and I might add, is unable to) progressed beyond the stage of arbitrariness."³⁷

And in his section entitled *Wrong*, Hegel furthers the argument for where a conception of right based upon abstract principles falls short. Even the title, *Wrong*, (more properly said, *Unrecht*) supports the interpretation that I have been laying out. To momentarily let go of the bilateral conception of right and reason, *Unrecht* is not wrong as we normally understand it in relation to right. In the *Philosophy of Mind*, Hegel writes that *Wrong* (or *Unrecht*) deals with right as liberty broken up into a multiplicity.³⁸ *Unrecht*, more truthfully understood, is un-right or non-right, and both are conceptions that maintain themselves within the sphere and existence of the actuality of right. Right, as the actuality of the rational, cannot be particularized.³⁹

What abstract right gives us is a semblance, a conception of right restricted to external and arbitrary determinations, an existence that is inappropriate to its essence. Right in the abstract "is present as something posited, and its inner universality is present as a common factor in the arbitrariness and particular wills of those

³⁵ Hegel, GWF. *Philosophy of Mind*, §492:245.

³⁶ Hegel, GWF. *Elements of the Philosophy of Right*, § 81:113.

³⁷ *Ibid.* §81:114.

³⁸ Hegel, GWF. *Philosophy of Mind*, §496:246.

³⁹ For reasons that I will not be getting into, it is enough to direct the interested reader to Hegel's section entitled *Morality* in Hegel, GWF. *Elements of the Philosophy of Right*.

concerned."⁴⁰ The truth of such a right is referred to by Hegel as being a mere semblance of the essential.

§II.3 – The Actuality of the Rational

People forget that the stars— and the cattle too — are governed and well governed too by the laws; laws however which are only internally in these objects, not for them, not as laws set to them: Whereas it is a man's privilege to know his law. They forget therefore that he can truly obey only such known law - even as his law can only be a just law, as it is a *known* law; - though in other respects it must be in its essential content contingency and caprice, or at least be mixed and polluted with such elements.⁴¹

The text is written from the standpoint of the flight of Minerva's owl, offering a view that is only attainable from the perspective of dusk; for, as Hegel seemingly and paradoxically reasons, philosophy always comes upon the scene too late to perform the function of instructing the world on how it ought to be. For by providing the immanent critique of the prevailing understanding and liberal theory, Hegel does in some measure change/transfigure things. And although it does not announce something 'essentially new', it also doesn't just mirror the prevailing understanding either. It sets forth the rationality of the actuality as part of the 'labor of the concept'. And "as the thought of the world, it appears only at a time when actuality has gone through its formative process and attained its completed state."⁴² It is from this premise that Hegel began his immanent critique of reality in general in which free will has its existence as 'right', establishing that:

This treatise, therefore, in so far as it deals with political science, shall be nothing other than an attempt to comprehend and portray the state as an

⁴⁰ Hegel, GWF. *Elements of the Philosophy of Right*, § 82:115.

⁴¹ Hegel, GWF. *Philosophy of Mind*, §529:260.

⁴² Hegel, GWF. *Elements of the Philosophy of Right*, Preface p.23.

inherently rational entity. As a philosophical composition, it must distance itself as far as possible from the obligation to construct a state as it ought to be; such instruction as it may contain cannot be aimed at instructing the state on how it ought to be, but rather as showing how the state, as the ethical universe, should be recognized.⁴³

In the *Philosophy of Mind* Hegel offers the reader a little something that should help in understanding his conception of the state and ethical universe, writing:

If Rome or the German empire, etc., are an actual and genuine object of political history, and the aim to which the phenomena are to be related and by which they are to be judged; then in universal history the genuine spirit, the consciousness of it, and of its essence, is even in a higher degree a true and actual object and theme, and an aim to which all other phenomena are essentially and actually subservient. Only therefore through their relationship to it, i.e. through the judgment in which they are subsumed under it, while it inheres in them, have they their vale and even their existence.⁴⁴

In the text Hegel is presupposing the actuality of the rational, not as an ought-to-be (for philosophy comes upon the scene too late for this), but instead, as an immanent examination of ethical life in terms of what should be according to its own rational standard. He tells of the movement of world history, the path of liberation for what he refers to as the spiritual substance. The text is providing the deed by which the absolute and final aim of the world is realized, and the merely implicit mind is able to achieve consciousness and self-consciousness; it represents the actuality of the essential.⁴⁵

In the last section of the text, entitled *World History*, Hegel writes: "In world history, it is spiritual actuality in its entire range of inwardness and externality."⁴⁶ In the *Philosophy of Mind*, he explains it as: "When the free will is the substantial will,

⁴³ *Ibid.* Preface p.21.

⁴⁴ Hegel, GWF. *Philosophy of Mind*, §549:280-281.

⁴⁵ *Ibid.* §549:271.

⁴⁶ Hegel, GWF. *Elements of the Philosophy of Right*, §341:372.

made actual in the subjective and conformable to its concept and rendered a totality of necessity, it is the ethics of actual life in family, civil society, and state."⁴⁷ In this universality, which is in and for itself, the particular in its 'multifarious actuality' is present as ideal. It is the spirit that lives in history and is its principle of movement, rendering world history free from the arbitrariness of blind fate.

On the contrary, since spirit in and for itself is reason, and since the being-for-itself of reason in spirit is knowledge, world history is the necessary development, from the concept of freedom of spirit alone, of the moments of reason and hence of spirit's self-consciousness and freedom. It is the exposition and the actualization of the universal spirit.⁴⁸

It is a statement of actual existence, a spirit which thinks in terms of a universal history; it strips off the limitations of, what Hegel refers to as, national minds and its own temporal restrictions, and thus lays hold of its concrete universality, rising to apprehend the absolute mind as the eternally actual truth in which the contemplative reason enjoys freedom.⁴⁹

The world spirit emerges with a particular and determinate principle "which has its interpretation and actuality in [a] constitution and throughout the whole extent of the [one's] condition."⁵⁰ Its material is mind, its function reason, and its self determining notion is liberty. In this context, world history falls outside of the problem inherent to abstract determination; "the necessary moment of the Idea of the world spirit which constitutes its ultimate stage attains its absolute right, and the nation [*Volk*] which lives at this point, and the deeds of that nation, achieve

⁴⁷ Hegel, GWF. *Philosophy of Mind*, §487:243.

⁴⁸ Hegel, GWF. *Elements of the Philosophy of Right*, §342:372.

⁴⁹ Hegel, GWF. *Philosophy of Mind*, §552:154.

⁵⁰ Hegel, GWF. *Elements of the Philosophy of Right*, §344:373.

fulfillment, fortune, and fame."⁵¹ It is in this context that, Hegel reasons, the individual represents the subjectivity by which the substantial is actualized - the concrete universal. His thought, Hegel writes in the *Philosophy of Mind*, makes the truth actually present; he leads it into the real world, liberating it through both its actuality and within his own self.⁵² "[And] since these individuals are the living expressions of the substantial deed of the world spirit and are thus immediately identical with it, they cannot themselves perceive it and it is not their object and end."⁵³

As Hegel writes, his treatise, as it deals with political science, is nothing more than an attempt to comprehend and portray the state as an inherently rational entity. And as a philosophical composition it is as distant as possible from the rational obligation of constructing an ought to be. With this freshly in mind, I will conclude this section with Hegel's own words:

In the hard struggle between [the] two realms...despite the fact that both are rooted in a single unity and Idea - the spiritual realm brings the existence [Existenz] of its heaven down to earth in this world... The secular realm, on the other hand, develops its abstract being-for-itself... As a result, their opposition has faded away. The present has cast off its barbarism and unjust arbitrariness, and truth has cast off its otherworldliness and contingent force, so that the true reconciliation, which reveals the state as the image and actuality of reason, has become objective.⁵⁴

⁵¹ *Ibid.* §345:373/374.

⁵² Hegel, GWF. *Philosophy of Mind*. §552:282.

⁵³ Hegel, GWF. *Elements of the Philosophy of Right*, §348:375.

⁵⁴ *Ibid.* §360:380.

Conclusion

This thesis began with the problem of individuality in abstract right. It arose with a comment in Robert Williams book entitled *Hegel's Ethics of Recognition* - the comment concerned a seeming contradiction; while Hegel is reputed to be a critic of abstract individualism, he begins the *Philosophy of Right* with a discussion of right that seems to advance just such a thesis. It would seem that he is putting forward the idea that abstract right is the basis for society and hence that society is constituted through an individualistic contract. And thus, are we to conclude from this beginning that the text defends the primacy of the principle of individualism? Does this show Hegel to be a proponent of liberal individualistic theory, contrary to the usual understanding?

My argument has been that Hegel, quite contrary to being a proponent of liberal individualist theory, advances a thesis of abstract individualism because that understanding and practice is the current actuality of ethical life as it understands itself, an actuality that the philosopher now seeks to comprehend. By beginning with the most immediate form of rights and freedoms (what he terms abstract right and abstract individualism) and comprehending it philosophically, Hegel demonstrates where the abstract conception right falls short; it is by means of an immanent critique that Hegel demonstrates the shortcomings of a theory of right based solely on individualist principles. Abstract right focuses on determinations of the will that are an abstraction from the understanding that is operative in ethical life; it shows how it is inadequate on its own terms, lacking actual determinacy it has existence but lacks true actuality. Hegel's immanent critique is a means of comprehending and hence

rationally re-enacting and transfiguring the current actuality of the rational. In light of this critique, the liberal individualist theory proves to be a finite and abstract one-sided expression of rights and freedoms. This thesis, more than just dispelling with the erroneous assumption itself, that is - a demonstration of how an interpretation of Hegel as an liberal individualist is a misreading and misunderstanding of the text - establishes abstract right as it most truthfully is: that is, an abstraction from the ethical life of society that it is dependant upon; and not, an elemental foundation for society itself.

My intent has been to present Hegel as a thinker who, by means of his critique, rejects the liberal individualist theory as a formal and finite expression of the understanding that is already operative in ethical life itself. For it, he reasons, falsifies the true nature of human society. To accomplish this I explicated and defended aspects of Hegel's overall argument that are indicative of the immanence of Hegel's critique. The claim that the *Philosophy of Right* does not present an abstract timeless truth about social reality and right but is rather its own time comprehended in thought. This comprehension setting forth the rationality of the actual and presupposes the historical condition of the actuality of the rational. It is the comprehension of something that is more than just one more historically situated understanding, it is the actuality of a rationality that as such is the final comprehension, i.e., nothing essentially new is able to occur in history as progress to the consciousness of freedom. The focus for this discussion being the (in)famous claims Hegel makes in the *Preface* about the rational and the actual, the owl of Minerva, and the timeliness of philosophy. A second aspect had to do with the

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abstractness of the beginning of the work and in a positive sense with the 'circular' character of the argument. The beginning of the argument with abstract and private right is an abstraction from the truth of ethical life that the whole text presents. In that respect, the beginning of the text presupposes the end. Or as I have shown, that the 'truth is the whole'; Hegel situates the abstract elements of the *Philosophy of Right* with which he begins within a complete concrete ethical context.

Having set forth the argument structure, what I sought to demonstrate Hegel's theory of abstract right on its own terms. To show how Hegel's account of abstract right serves as a critique of the prevailing rationality of the actual; that is – the most immediate form of right (the abstract contractarian views of right and society). The chapter offered not only a sketch of Hegel's view of abstract right on its own terms, but also how Hegel uses abstract right as a means of critique; and finally to conclude, I offered a look at the actuality of the rational.

Hegel quite obviously believed a personal account of right to be nothing more than an empty abstraction. A social order founded upon such emptiness that it is unable to even protect the individual's rights, much less to actualize the whole of concrete freedom. The greatest enemy to personal and subjective freedom being a mechanistic conception of the state that views it as being nothing more than a means for the enforcement of abstract rights. As Wood points out, it sets the state up as an abstraction in opposition to true individuality. The aim of the *Philosophy of Right* is nothing less than a demonstration of how both personal and subjective freedom can receive real content through the institution of the modern state.

In doing this I hope to have made clear where the principle of abstract

individualism falls short. I hope to have shown the shortcomings of a liberal individualist contract theory, as well as demonstrate how Hegel's own and correctly interpreted views accommodate and do justice to the idea of abstract and private right. For the point has not been to reject the idea of abstract and formal right wholesale, but rather to show how it exists in relation to ethical life. The *Philosophy of Right's* subject matter is the very idea of right. It deals both with the concept and the actualization of that concept; and its truth lies in the coherent presentation and comprehension of the rational understanding of reason that is actual in the world. Hegel's reasoning is done from the context of the whole that ethical life represents. He is providing an immanent critique of the understanding that is operative in ethical life. Thus the presupposition is of a rationality of the actuality of ethical life, i.e. the state; and it is from this context that Hegel is reasoning, from the end of history, and from the dusk that Minerva's owl has taken wing.

The aim of my thesis has been to demonstrate, not only how attributing a liberal individualistic contractarian view to Hegel is a misunderstanding of the text, but also how it is that Hegel himself is reasoning; that is – how abstract right exists in relation to the text as a whole.

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